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A TREATISE

ON THE

Law of Naturalization

OF THE

United States

BY

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of the United States," etc.

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To My Devoted Wife, Clara M.,
This Book is Affectionately Inscribed.

PREFACE.

One of the most creditable achievements of the administration of President Roosevelt was the reformation of our naturalization laws.

These laws, substantially the statutes enacted more than a hundred years ago when our population was less than four millions, and when it was the policy of our government to invite immigration, were ill adapted to our modern conditions, with a population of eighty millions and an influx of foreigners of more than a million annually. Under these laws lax and unsatisfactory methods of naturalization had grown up, opening the way to gross frauds against our citizenship, including perjury, false impersonation, and traffic in false and counterfeit certificates of citizenship. Such certificates were sometimes sold to alien criminals to secure their admission to the United States, and frequently to procure protection against their home governments. Cases have actually occurred where aliens have landed on our shores for the first time, having in their possession certificates entitling them to the full rights of American citizenship.

Our Presidents had on numerous occasions brought the subject to the attention of Congress and urged legislation, but without effect. At length, in March, 1905, President Roosevelt—at the suggestion, it is understood, of the Honorable Oscar Straus, now Secretary of Commerce and Labor—appointed, by Executive order, a special commission, composed of Milton D. Purdy of the Department of Justice, Gaillard Hunt of the Department of State, and Richard K. Campbell of the Department of Commerce

and Labor, to investigate the subject of naturalization, and recommend legislation. The Commission made a thorough investigation and report and submitted drafts of bills which the President transmitted to Congress. While the bills drafted by the Commission were not enacted into law, their recommendations formed the basis for the bill prepared and reported by the House Committee on Immigration and Naturalization, which, with some modifications, became a law on June 29, 1906.

This law effects a revolution in our system of naturalization, giving the Federal Government effective control of the matter through a central bureau in the Department of Commerce and Labor, and throws such safeguards around naturalization as will effectually prevent frauds if the law is enforced,—and no one who knows President Roosevelt and Secretary Straus can doubt that it will be faithfully and rigidly enforced.

Besides the numerous changes in our statutes made by this law, as shown in the text, still more recent legislation, making further modifications of importance and far-reaching consequences in our naturalization laws, has been enacted. In pursuance of a report of the House Committee on Foreign Affairs (H. Rep. No. 4,784, 59th Cong., 1st session), Secretary Root designated James B. Scott, Solicitor for the Department of State, David J. Hill, Minister to the Netherlands, and Gaillard Hunt, chief of the Passport Bureau (now the Bureau of Citizenship), to make an inquiry into the subjects of citizenship, expatriation and protection abroad, and to report with recommendations. The report of this board, which was embodied in House Document No. 326, 59th Cong., 2d session, together with recommendations of the board, was transmitted to Congress, and nearly all of the recommendations were incorporated in the law of March 2, 1907.

These numerous modifications of our laws, and the

lack of any comprehensive work on the subject of naturalization, have influenced the writer to prepare, as a companion volume to his work "Citizenship of the United States," an independent treatise on Naturalization. While the recent legislation completely changes the method of naturalizing aliens, parts of the old laws remain in force. This work clearly indicates the changes made, and undertakes to show by an exhaustive analysis of the new legislation and by reference to and discussion of the judicial decisions and the opinions and rulings of the Executive and international claims commissions, what the law of naturalization now is.

The work is specially designed to meet the needs of judges and clerks of courts having jurisdiction in naturalization matters, of United States Attorneys who appear for the government in naturalization proceedings and in proceedings to set aside or cancel naturalization certificates, of diplomatic and consular officers and other officers in the various branches of the government service dealing with questions relating to citizenship and naturalization. It is believed that the work will also fill a real need in furnishing, in comprehensive and convenient form, to lawyers who desire to advise their clients seeking naturalization or to establish rights of citizenship, and to general readers and students wishing to be well informed, the complete law on this important subject. Executive and Departmental orders and regulations are included in their appropriate places and the book will be found to constitute an exhaustive manual.

In the preparation of the work considerable assistance was derived from the comprehensive report of the citizenship board referred to, as well as from the chapter on nationality in John Bassett Moore's monumental work, the *International Law Digest*, and the author desires to make due acknowledgment therefor.

By an order of the Secretary of State dated May 31, 1907, the designation of the Passport Bureau of the Department of State, to which numerous references are made in this work, was changed to the Bureau of Citizenship. Since the Secretary's order was made too late for insertion in the text of this book, which had then gone to press, the change is noted in the Preface.

F. V.

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1. NATURALIZATION IN PURSUANCE OF THE STATUTES OF THE UNITED STATES BY TAKING OUT FORMAL PAPERS.

A. Definition.

Naturalization is the act of adopting a foreigner and clothing him with the privileges of a citizen. 9 Ops. Atty. Gen. 359; *Boyd v. Nebraska*, 143 U. S. 135.

A naturalized citizen becomes a member of the society, possessing all the rights of a native citizen and standing, in the view of the Constitution, on the footing of a native. Chief Justice Marshall, in *Spratt v. Spratt*, 1 Pet. 343.

All persons born or *naturalized* in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. Fourteenth Amendment to the Constitution, Sec. 1.

B. Power to Regulate Naturalization Vested Exclusively in Congress.

In the United States the naturalization of foreigners is within the exclusive control of the Federal Government. It is one of the powers expressly granted to the National Government.

Prior to the establishment of the government under the Constitution, the different colonies and states had enacted laws regulating the naturalization of aliens. They had manifested very diverse views in their legislation on the subject. One state, desiring to foster immigration, conferred on foreigners all the rights of citizenship on their landing on its shores, while another required a probation of many years before conferring those privileges upon the immigrant. It was feared that if the states were to be left to themselves, the same diversity would continue under the Constitution. As early as 1782, Mr. Madison strenuously urged the adoption of a uniform rule of naturalization *by the states*.

The Constitution (Art. 1, Sec. 8) provides that "the Congress shall have power to establish a uniform rule of naturalization." The Constitution went into operation on the 4th of March, 1789. The first Congress that assembled under it, at its second session, exercised the power vested in it by the Constitution, and passed an act to establish a uniform system of naturalization. Act of March 26, 1790, 1 Stat. at L. 103.

The question arose whether, after this act went into effect, any authority existed for the naturalization of foreigners under *state laws*. The United States Supreme Court, in *Collet v. Collet* (1792), 2 Dallas, 294, expressed the opinion that the states still individually enjoyed a concurrent authority upon the subject, but that this authority could not be exercised so as to contravene the rule established by the authority of the Union.

But in *United States v. Villato* (1797), 2 Dallas, 370, it was decided that a Spaniard by origin who had complied with the requirements prescribed by the laws of the State of Pennsylvania in relation to naturalization was not a citizen of the United States. While the decision in this case was based on the ground that the naturalization laws of the state had been repealed by the new constitution of that state, doubt was expressed by one of the judges of the court as to the correctness of the view expressed in *Collet v. Collet*, and he indicated his belief that the power of naturalization operated exclusively as soon as it was exercised by Congress.

And in *Chirac v. Chirac* (1817), 2 Wheaton, 259, Chief Justice Marshall said: "That the power of naturalization is exclusively in Congress does not seem to be and certainly ought not to be controverted."

Matthews' Lessee v. Rae (1829), 3 Cranch C. C. 699, involved the question of the status of the naturalization law of Maryland of 1779 and that of Pennsylvania of 1789. The court held that one who, after the Act of Congress of 1790, had gone through the forms of naturalization prescribed by the laws of the states, had not been naturalized, "the state naturalization laws being superseded and annulled by the Act of Congress whose jurisdiction upon that subject is, under the Constitution of the United States, exclusive."

Chief Justice Taney in *Dred Scott v. Sandford*, 19 Howard, 393, said: "Previous to the adoption of the Constitution of the United States every state had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the state and gave him no rights or privileges in other states beyond those secured to him by the laws of nations and the comity of states. . . . Each state may still confer" these rights and privileges "upon an alien, or

any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States. . . . The rights which he would acquire would be restricted to the state which gave them. The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive and has always been held by this court to be so. Consequently no state, since the adoption of the Constitution, can by naturalizing an alien invest him with the rights and privileges secured to a citizen of a state under the Federal Government, although, so far as the state alone was concerned, he would undoubtedly be entitled to the rights of a citizen and clothed with all the rights and immunities which the constitution and laws of the state attached to that character. It is very clear, therefore, that no state can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It can not make him a member of this community by making him a member of its own; and for the same reason it can not introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it."

Mr. Justice Gray, in *United States v. Wong Kim Ark*, 169 U. S. 649, said: "The power granted to Congress by the Constitution, 'to establish an uniform rule of naturalization,' was long ago adjudged by this court to be vested exclusively in Congress."

In *Minneapolis v. Reum*, 56 Fed. 576, the court said, referring to the power vested in Congress by the Constitution in relation to naturalization: "Congress has exercised this power, established the rule, and expressly declared

that foreign-born residents may be naturalized by a compliance with it, and not otherwise. This power, like the power to regulate commerce among the states, was carved out of the general sovereign power held by the states when this nation was formed and granted by the Constitution to the Congress of the United States. It thus vested exclusively in Congress, and no power remained in the states to change or vary the rule of naturalization Congress established, or to authorize any foreign subject to denationalize himself and become a citizen of the United States without a compliance with the conditions Congress had prescribed." See, also, *Lanz v. Randall*, 4 Dill. 425.

The history of the proceedings of the Constitutional Convention, and the speeches of Charles Pinckney who drafted this clause of the Constitution, clearly show that it was the intention of the framers to confer on the Federal Government the exclusive power to declare on what terms naturalization should be extended to foreigners.

The State courts have adopted the view taken of the subject by the Federal courts. *Lynch v. Clark*, 1 Sandf. Ch. 641; *Davis v. Hall*, 1 Nott & McCord, 292; *In re Wehlitz*, 16 Wis. 443; *In re Stephens*, 4 Gray, 559; *In re Ramsden*, 13 How. Pr. 429.

By the Act of April 14, 1802 (2 Stat. at L. 153), Congress declared that the children of persons who, previous to the passage of any law on the subject of naturalization by the Government of the United States, had been naturalized under the laws of one of the States, should, if dwelling in the United States, be considered as citizens of the United States.

C. Naturalization a Judicial Function.

In the United States naturalization is a judicial function, having been committed by Congress to the courts.

A naturalization proceeding is a judgment. Chief

Justice Marshall, in *Spratt v. Spratt* (4 Peters, 393), said: "The various acts upon the subject submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. This judgment is entered on record as the judgment of the court." See, also, *Campbell v. Gordon*, 6 Cranch, 175; *Mut. Benefit Ins. Co. v. Tisdale*, 91 U. S. 238; *Ritchie v. Putnam*, 13 Wend. 524; *State v. McDonald*, 24 Minn. 48.

An interesting discussion of the question whether the final order of a court admitting an alien to citizenship is a judgment, is found in the opinion of the Spanish Treaty Claims Commission in the case of *Ruiz v. United States*, from which full quotation is made under "Impeachment of Naturalization," page 141, post. The Commission said:

"In the refinements of legal phraseology we may find some other word that suits us better than *judgment* by which to call the final determining act of a court in passing upon such proceedings—order, adjudication, decree, decision, conclusion—but the effect is just the same. The thing done and not the technical name one chooses to give it is of importance only. The validity and legality of an act done, whether by an officer or a tribunal, depends upon the jurisdiction over the subject-matter, and the exercise of its delegated power by a judicial body in reaching a conclusion is, to all intents and purposes, a judgment, whether technically so called or not; and it is a matter of legal insignificance what other term or name is employed to express it. The authorities make no distinction between the orders of officers and the judgments of tribunals, where the exercise of jurisdiction is confided to their discretion, and they employ the same within the authority and power conferred. Neither do we find authorities to sustain the proposition that a judgment in uncontested proceedings, by default or confession, is excluded from the terms of

Article IV, Section 1, of the Constitution, which provides that 'full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state' and of the Act of Congress, Revised Statutes, Section 905, which declares that such records and judicial proceedings, when properly authenticated, 'shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.' The authorities appear to make no distinction whatever between different kinds of judgments. They are all entitled to the same faith and credit, whether entered by default, confession, or in a contested litigation, and may be impeached on the same grounds as other judgments are impeachable upon. Freeman on Judgments, Section 588; *Bunn v. Ahl*, 29 Pa. St. 387; 72 Am. Dec. 639; *Sipes v. Whitney*, 30 Ohio, 69; *Kingman v. Paulson*, 126 Ind. 507. It is interesting to note in this connection that neither the Constitution nor the statute refers specifically to a judgment, and it is equally true that the Acts of Congress relating to naturalization and conferring jurisdiction upon certain courts never speak of a judgment, and yet the courts of the country, from the earliest decisions to the present time, in innumerable cases, have uniformly treated them as judgments. Undoubtedly the decision of a court of competent jurisdiction to grant a naturalization certificate based upon facts made to appear to its satisfaction, is comprehended in the expression 'public acts, records, and judicial proceedings, and must be a judgment.' "

D. What Courts Are Authorized to Naturalize.

The first law enacted by Congress concerning naturalization (Act of 1790), authorized "any common law court of record in any one of the states" to admit aliens to citizenship.

The Act of 1795, which repealed the Act of 1790, conferred jurisdiction in naturalization proceedings upon "the supreme, superior, district, or circuit court of some one of the states, or of the territories northwest or south of the river Ohio, or a circuit or district court of the United States."

The Act of April 14, 1802 (2 Stat. at L. 153), which, in turn, repealed the Act of 1795, authorized "the supreme, superior, district or circuit court of some one of the states or of the territorial districts of the United States, or a circuit or district court of the United States," to act in naturalization proceedings, and declared that "every court of record in any individual state having common law jurisdiction and a seal and clerk or prothonotary, shall be considered as a district court within the meaning of this act." As carried into the Revised Statutes of the United States (1878), Section 2165, which remained the law on the subject until the passage of the Act of June 27, 1906, 34 Stat. at L. 596, the provision read: "A circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common law jurisdiction and a seal and clerk."

The Act of June 27, 1906—the existing law—provides that "exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts: United States circuit and district courts now existing, or which may hereafter be established by Congress in any state, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the Supreme Court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any state or territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law

or equity, or law and equity, in which the amount in controversy is unlimited."

1. Courts of Record.

The language of the Statute is "courts of record having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited."

There have been no judicial decisions under the Act of 1906, but the courts have frequently passed upon the question of jurisdiction of courts under prior laws. As cases may arise concerning naturalization conferred under prior laws, and as the language of the existing law is, in part, similar to that of previous acts, references to earlier decisions of the courts are given.

In *ex parte* Cregg, 2 Curtis, C. C. 98, the Court said: "When the Act speaks of *courts of record* it speaks of courts whose proceedings are duly recorded by authorized persons; and when it says 'having a clerk or prothonotary,' it superadds the requirement that those proceedings shall be recorded by one of those officers."

In *Mills v. McCabe*, 44 Ill. 194, the question involved was whether the Marine Court of the City of New York, which was created by Act of the State Legislature and had a clerk and seal and a limited common law jurisdiction, was a court of record within the meaning of the Act of Congress. The New York courts had decided that the marine court was a court of record only to the extent to which it was declared so by statute, and not in the strict legal sense of the term. The Illinois court said: "A fair and reasonable construction of the Act of Congress requires us to hold that only a court of record for general, and not special, purposes was intended to be embraced. The Act has not declared that a court of record for some purposes only shall be invested with

such jurisdiction. Nor do we think such can be held to be the legislative intention."

A court with no clerk or recording officer other than the judge, has been held to have no jurisdiction of applications for naturalization. *Mills v. McCabe*, 44 Ill., 194; *State ex rel. Fossler v. Webster*, 7 Neb. 469; *Re Dean*, 83 Me. 489.

In *ex parte Gladhill*, 8 Met. 168, the question being whether the police court of Lowell, Mass., was a court of record, the court said:

"It possesses all the characteristics of a court of record. It is to be holden by a learned, able, and discreet person to be appointed and commissioned by the governor pursuant to the constitution. In general, all judicial officers by the constitution hold their offices during good behavior, except justices of the peace, whose office is limited to the term of seven years. There is also a provision, Section 8, for the appointment of special justices to hold the court whenever the standing justice shall be interested in any suit or prosecution, or shall be unable, from any cause, to hear and determine any matter pending in said court. This indicates the establishment of a court, or judicial organized tribunal, having attributes and exercising functions, independently of the person of the magistrate designated generally to hold it, and distinguishes it from the case of a justice of the peace on whom, personally, certain judicial powers are conferred by the law.

"We have no doubt it is a court of record. Section 6 directs the keeping of a fair record and a subsequent act, cited hereafter, authorizes the appointment of a clerk for the same purpose."

2. Common Law Jurisdiction.

The courts have frequently construed the phrase: "common law jurisdiction," in the naturalization statutes. The constructions have not been uniform.

Mr. Justice Story, in *Parsons vs. Bedford*, 3 Pet. 433, said: "The phrase 'common law' found in this clause, is used in contradistinction to equity and admiralty and maritime jurisprudence."

In the case of *In re Conner*, 39 Cal. 98, the court said that the term "common law jurisdiction" is capable of no other meaning than jurisdiction to try and decide causes which were cognizable by the courts of law under what is known as the common law of England; that, as our judicial system was modeled chiefly after that of England, when we speak through our statutes and courts of common law actions, proceedings at common law, and common law jurisdiction, we mean such actions, proceedings, and jurisdiction as appertain to the common law of England as administered through her courts. The court held, however, that the statute did not require that the courts have *all* the common law jurisdiction which pertains to all classes of actions, but that it was enough that it had "common law jurisdiction."

In *United States vs. Power*, 14 Blatch. 223, it was decided that the City Court of Yonkers, which by statute had civil jurisdiction in all actions for the recovery of money when the amount recovered did not exceed one thousand dollars, had jurisdiction in naturalization proceedings. The court said that it was manifest that by the statutory provisions the court was "authorized to exercise some common law jurisdiction—that is, it has jurisdiction to hear and determine causes which were cognizable by the courts of law under what is known as the common law of England, although it has not jurisdiction of all such causes." The court added, that the statute of the United States did not require of courts authorized to entertain applications for naturalization that they should have *all the jurisdiction* possessed by any court of law; that if the court might exercise any part of that jurisdiction it was within the language of

the statute and within its meaning as well. See, also, 8 Met. 168; 2 Curt. 98; 50 N. H. 245; 39 Cal. 98.

In accordance with this view, a county court which had exclusive jurisdiction in common law actions of trespass commenced in a justice's court, was held to come within the terms of the statute. *People v. Sweetman*, 3 Park. Crim. Rep. 358.

And, in *People v. Pease*, 30 Barb. 588, it was decided that a county court, shown to have jurisdiction of suits commenced in a justice's court, where it appeared by the answer of the defendant that the title to lands had come in question, also in matters of partition and admeasurement of dower, "with other powers not enumerated," satisfied the statutory requirements.

The court, in *In re Conner*, supra, held that the fact that the jurisdiction of the court was restricted as to the amount involved did not deprive it of authority to act in naturalization proceedings.

In *United States v. Lehman*, 39 Fed. 49, it was held that a court of criminal correction whose jurisdiction was statutory, "having power to punish offenses that existed at common law, and to enforce private rights and to redress private wrongs recognized by the common law," and whose action in the exercise of that power "is governed by the principles, rules, and usages of the common law in so far as they have not been modified or abolished by statute," had power to naturalize aliens. The court said: "Congress intended to confer the power of naturalization on all courts of record of the several states that have power to administer justice under and in accordance with that system of jurisprudence known as the common law." See, also, *Levin v. United States*, 128 Fed. 826.

On the other hand, there are decisions holding that courts empowered by statute to exercise common law jurisdiction for certain purposes, but, not having com-

mon law jurisdiction in all cases, did not come within the terms of the act of Congress. *Ex parte McKenzie*, 51 S. C. 244; *Ex parte Tweedy*, 22 Fed. 84.

3. Act of June 29, 1906.

The Act of Congress of June 29, 1906, substitutes for the phrase "common law jurisdiction" the words "jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." The difficulty indicated in the diverse decisions we have just been considering is not obviated by the change in phraseology of the law. It expressly provides that a court may naturalize which has jurisdiction of actions both at law and in equity, or of actions either at law or in equity. This language confers jurisdiction on courts of equity.

The law contains the qualification, however, that the amount in controversy shall be unlimited.

4. State Courts.

It is apparent that the majority of naturalizations are by state courts.

Before a state court acts in a naturalization proceeding, under the act of 1906, the clerk of the court is required by a regulation of the Department of Commerce and Labor, to furnish the Bureau of Naturalization with authoritative evidence (preferably the certificate of the Attorney-General of the state) that the court has "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Nat. Reg. of Oct. 2, 1906.

There is a line of decisions holding that state courts in admitting aliens to citizenship, act as United States courts. An opposite view is held by another line of cases.

In *People v. Sweetman*, 3 Park. Crim. 358, the court said: "The Act of Congress (relating to naturalization)

adopts every state court as its agent to do this service that is a court of record, and has common law jurisdiction and a seal and clerk. . . . Without attempting to examine the question in regard to the power of the Federal Government to confer such jurisdiction upon state courts and magistrates, it seems . . . quite clear that, in entertaining such proceedings they are exclusively under the laws of the United States, and should be deemed *quoad hoc* courts of the United States." See, also, *Re Christern*, 11 Jones and S. 523; and *In re Ramsden*, 13 How. Pr. 429.

The leading case holding an opposite view is *United States v. Severino*, 125 Fed. 949, in which the authorities on both sides are collected and reviewed and the conclusion reached that: "State courts while entertaining jurisdiction in naturalization proceedings remain state courts." See, also, *Rump v. Commonwealth*, 30 Pa. St. 475.

It was also held in *United States v. Severino* that perjury committed by a witness in a naturalization proceeding in a state court is punishable by the sovereignty whose justice it offends, and that the Federal court can not entertain jurisdiction in the absence of a Federal statute conferring it.

In *In re Naturalization*, 5 Pa. Dist. R. 597, it was held that state courts are not obliged to exercise the power conferred by Rev. Stat. Sec. 2165.

In *Stephens, Petitioner*, 4 Gray, 559, it was declared that the power to naturalize given to state courts is a naked power which imposes no legal obligation on courts to assume and exercise it, and that such exercise is not within their official duty or their oath to support the Constitution of the United States. The court added: "But whatever may be the authority of Congress to require the performance of duties by state courts, magistrates and officers not affecting the organization of the national government or not expressly provided for by

the Constitution . . . it is well established that such courts and magistrates may, if they choose, exercise the powers thus conferred by Congress unless prohibited by state legislation." See, also, *Rushworth v. Judges*, 58 N. J. Law, 97; *Morgan v. Dudley*, 18 B. Mon. 693; *State v. Penney*, 10 Ark. 621.

In *State v. Whittemore*, 50 N. H. 245, the view was expressed that the state legislature may prohibit a state court which comes within the class of tribunals described in the United States Act, from exercising jurisdiction in naturalization cases. But "the state can not confer that jurisdiction on any tribunal which does not come within the terms of the United States Statute." *Id.* See, also, *In re Ramsden*, *supra*.

The state may indicate which of its courts coming within the class of tribunals described in the United States Act, shall exercise the jurisdiction, and it may fix the time within which such jurisdiction may be exercised. *Rushworth v. Judges*, *supra*. See, also, *In re Gilroy*, 88 Me. 199; *Ryan v. Egan*, 156 Ill. 224.

5. Judges.

Functions.

Naturalization is a function of the court, not of the clerk.

While the preliminary declaration of intention may be made before the clerk, the petition for naturalization must be addressed to the court (Sec. 27); the facts as to the requisite residence of the applicant, his behavior as a man of good moral character and attachment to the principles of the Constitution, must "be made to appear to the satisfaction of the court." These facts shall be proved by the oath of the applicant and the testimony of at least two witnesses, citizens of the United States. Sec. 4, par. 4.

And the law expressly provides that "every final hearing upon such petition shall be had *in open court before a judge or judges thereof*, and every final order which may be made upon such petition *shall be under the hand of the court** and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath *before the court and in the presence of the court.*" Sec. 9.

The applicant is required, before he is admitted to citizenship to declare on oath, *in open court*, that he will support the Constitution and defend it and the laws of the United States against all enemies and bear truth faith and allegiance to the same.

He shall also declare on oath, *in open court*, that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of which he was before a citizen or subject. Sec. 4, par. 3.

In case the applicant has borne any hereditary title or has been of any of the orders of nobility, he shall make an express renunciation thereof *in the court* to which his application is made. Sec. 4, par. 5.

The days upon which final action shall be had on petitions of naturalization *shall be fixed by rule of court.* Sec. 6.

The court may, in its discretion, upon petition of the applicant and as a part of his naturalization, make a decree changing the name of said alien. Sec. 6.

Any court having jurisdiction to naturalize aliens has jurisdiction of a suit instituted by the United States District Attorney for the purpose of setting aside and

* No certificate of naturalization shall be issued to a petitioner until after the judge of the court granting naturalization has signed the order to that effect. Nat. Reg. of Oct. 2, 1906.

canceling a certificate of citizenship on the ground of fraud or that it was illegally procured. Sec. 15.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, *the court* in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued *by the court* making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

Courts having jurisdiction of the offense of procuring naturalization in violation of the Act of 1906 are authorized to adjudge and declare void the final order admitting to citizenship a person convicted of such offense. Sec. 23.

Renunciation of Citizenship by Foreign-born Widow of American Citizen.

A new function of courts of naturalization is conferred by the Act of March 2, 1907, which authorizes such courts to receive the renunciation made by the foreign-born

widow of a citizen of the United States of the citizenship acquired by her marriage. The law reads:

"Sec. 4. That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, *unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens*, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation."

6. Clerks of Courts.

Duties:

a. As to Declaration of Intention.

It shall be the duty of the clerk of any court authorized to naturalize aliens to receive declarations of intentions of aliens.* Sec. 4, par. 1, and to keep and file a duplicate of each declaration made before him. Sec. 12.

By the express terms of the Act of June 29, 1906, an alien's declaration of intention may be made before the "authorized deputy" of the clerk. Sec. 4, par. 1. And prior to the passage of that act it was held that the

*The declarations of intention shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made a part of the records of the court. Sec. 14, Act of June 29, 1906. Declarations of intention will be furnished in bound volumes, as a court record, varying in size according to the amount of such business transacted by the court. In addition to the bound records, the duplicate and triplicate declarations of intention will be furnished as loose sheets attached together and perforated, so that they can be readily torn apart, the triplicate to be given to the petitioner and the duplicate to be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization). Each bound record will consist of the original declarations of intention, paged in consecutive order and indexed. These volumes are to be numbered and will form a permanent record of the court. Nat. Reg. of Oct. 2, 1906.

actual work of the clerk might be performed by a deputy acting for the clerk. *State v. Hoeflinger*, 35 Wis. 393. See, also, Sec. 21, Act of 1906, which specifically refers to the "authorized deputy or assistant" of the clerk.

In *In re Dean*, 83 Me. 489, the court decided that the recorder of a municipal court was a clerk within the meaning of the naturalization statute (R. S. 2165). The court said:

"The court must have a clerk distinct from the judge, not necessarily an officer denominated clerk, but a permanent 'recording officer charged with the duty of keeping a true record of its doings and afterwards of authenticating them.' . . . The court contemplated by the Act of Congress has an organized existence; it is impersonal; the judge is one of the constituent parts of the organization; the clerk is another and a separate and an independent element. The essential function of the clerk is to make and keep the records and give them legal verification by his attestation and the use of the seal.

"By those sections of the Act establishing the municipal court of Biddeford above quoted the responsible duty of making and keeping the records of the court is imposed upon the judge and not upon the recorder. There is no duty of making and keeping the records imposed upon the recorder by law. He is to keep the records of the court only when requested so to do by the judge. Furthermore, the recorder of this court can not authenticate by his attestation any copies of records 'made and kept' by the judge, or kept by himself at the request of the judge. Only such copies of the records as are 'duly certified by the judge shall be legal evidence in all courts.' The authority to appoint a recorder was conferred upon the judge, not for the purpose of creating a fixed and permanent clerical office distinct and separate from that of the judge, but primarily to provide for the judge a substitute who should be empowered to act in

his stead in the contingencies named in the act. 'His signature as recorder is sufficient evidence of his right to act instead of the judge.' When thus acting in a judicial capacity, exercising the powers and performing the duties of the judge, the recorder is the court, and must personally make, keep, and authenticate the records of the court. The recorder's court has no clerk other than the recorder himself."

The declaration of intention must be made in the clerk's office, or in open court.

b. As to Petition for Naturalization.

The petition of an applicant for naturalization must be subscribed and sworn to before the clerk of the court to which it is addressed. Sec. 27, Act of 1906.

The petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.* Sec. 14, Act of June 29, 1906.

The clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under

*The original of the petitions for naturalization will be furnished in bound volumes of varying size, paged in consecutive order and indexed. The duplicate petitions will be furnished as loose sheets and must be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) within thirty days after execution. The original petitions for naturalization must be filled out and signed in the bound volumes, and remain as a part of the permanent records of the office in which filed.

If an alien is physically unable to speak, that fact should be stated in his petition for naturalization in lieu of the statement, "I am able to speak the English language."

authority of this act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years. Sec. 22, Act of June 29, 1906.

The clerk shall receive and file at the time the petition for naturalization is filed a certificate from the Department of Commerce and Labor (if the petitioner arrives in the United States after the passage of the Act of June 29, 1906), stating the date, place and manner of his arrival in this country, and the declaration of intention, which certificate and declaration shall be attached to and made a part of the petition.

c. As to Notice of Petition.

Immediately after filing the petition the clerk of the court shall give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity and residence of the alien, the date and place of his arrival in the United States, and the date as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf. Sec. 5, Act of 1906.*

See Notice p. 92, post.

*Within thirty days after posting the notice required by Sec. 5, the clerk shall inform the Bureau of Immigration and Naturalization of the date, as near as may be, for the final hearing of each and every petition for naturalization. Nat. Reg. of Oct. 2, 1906.

d. Witnesses.

The clerk shall, if the applicant requests it, issue a subpoena for the witnesses named by the applicant to appear upon the day set for the final hearing. Sec. 5.

e. As to Docketing Petitions.

Petitions for naturalization may be made and filed during term time or vacation of the court, and shall be docketed the same day as filed. Sec. 6.

f. As to Duplicates of Petitions.

It shall be the duty of the clerk of the court to furnish to the Bureau of Naturalization duplicates of all petitions within thirty days after the filing of the same. Sec. 12.

g. As to Final Hearing.

The clerk shall enter in full upon a record kept for that purpose every final order which may be made upon a petition for naturalization. Sec. 9.

h. As to Aliens Denied Naturalization.

It shall be the duty of the clerk to report to the Bureau of Naturalization within thirty days after the final hearing and decision of the court the name of each and every alien who shall be denied naturalization. Sec. 12, Act of 1906.*

i. As to Certificates of Citizenship.

(A) Blank Certificates. Upon the requisition of clerks of courts authorized to naturalize aliens, the courts shall be furnished from time to time by the Bureau of

*Within thirty days after the sitting of a court in naturalization cases, the clerk of such court shall forward to the Bureau of Immigration and Naturalization, a list containing the name of each and every alien who, during such sitting of court, has been denied naturalization, and the reason or reasons for such denial. Nat. Reg. of Oct. 2, 1906.

Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said bureau. Sec. 3, par. 4.

The first supply of blank forms will be furnished upon the written application of the clerks of courts having jurisdiction to naturalize aliens, accompanied, in the case of clerks of state courts, by authoritative evidence (preferably the certificate of the attorney-general of the state) that the courts of which such clerks are officers have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Subsequent supplies of such blank forms will be furnished the clerks of courts having jurisdiction to naturalize aliens upon the receipt by the Bureau of Immigration and Naturalization (Division of Naturalization) of requisitions. Nat. Reg. of Oct. 2, 1906.

Clerks of courts will be furnished with requisition blanks on which are listed, by number and title, all blank forms, including record and order books, to be used in the naturalization of aliens, and these forms must be obtained exclusively from the Department of Commerce and Labor (Division of Naturalization), none other being official. Manila envelopes or jackets will be furnished to clerks in which to place the triplicate declaration of intention or the original certificate of naturalization before delivering them to the person making the declaration or to the person naturalized. Nat. Reg. Oct. 2, 1906.

All applications for supplies of certificates of naturalization should be accompanied by a statement of the number, if any, of certificates of naturalization issued by the clerks of courts making such applications since June 1, 1903, if such certificates failed to comply with

the requirements of the immigration act of March 3, 1903. Id.

Certificates of naturalization will be supplied in bound volumes consisting of original and duplicate certificates and stubs. Each original and duplicate certificate and the stub will be given the same serial number, the stub to the original certificate bearing a page number in addition to its serial number. Each book will bear a volume number, and the volume number and page of the stub must be given on the face of the certificate. The original certificate will be given to the petitioner in accordance with the final order of the court, and the duplicate shall be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) by registered mail within thirty days after the issuance of the original, the stub to the original constituting a part of the permanent records of the court. Nat. Reg. Oct. 2, 1906.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Naturalization, and shall account for the same to the said Bureau whenever required so to do by the Bureau. Sec. 12, par. 3.

(B) Defaced or Injured Certificates. No certificate of citizenship received by any clerk which may be defaced or injured in such manner as to prevent its use as provided in the Act of June 29, 1906, shall in any case be destroyed, but such certificate shall be returned to the said bureau.

(C) Accountability for Certificates. In case any clerk shall fail to return or properly account for any certificate furnished by the said bureau as provided by law, he shall be liable to the United States in the sum of fifty dollars to be recovered in an action of debt for each and every certificate not properly accounted for or returned. Sec. 12, par. 3.

(D) **Duplicates.** It is made the duty of the clerk of every court exercising jurisdiction in naturalization matters under the Act of June 29, 1906, to send to the Bureau of Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate. Sec 12, par. 1.

Beginning with October 1, 1906, and on the first working day of each and every month thereafter, clerks of courts shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) duplicate declarations of intention and petitions for naturalization filed, and all duplicates of certificates of naturalization issued, during the preceding month. Duplicate petitions for naturalization and duplicate certificates of naturalization shall be forwarded by registered mail; and duplicate declarations of intention shall be sent therewith, provided the combined weight of the documents does not exceed 4 pounds, otherwise they shall be forwarded in a separate package by unregistered mail. The clerks making such shipments are required to notify the Chief of the Division of Naturalization of the date thereof, by unregistered mail. In transmitting petitions clerks of courts are directed to state that the names of the petitioners and their witnesses have been conspicuously posted, as required by law. Nat. Reg. Oct. 2, 1906.

(E) **Stub.** Each clerk shall keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. Sec. 12.

(F) **Canceled Certificates.** Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the

court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship, which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws. Sec. 15, Act of 1906.

j. Certified Copies.

It shall be the duty of the clerks of courts to furnish to the Bureau of Naturalization certified copies of such proceedings and orders instituted in or issued out of the courts affecting or relating to the naturalization of aliens as may be required by said Bureau. Sec. 12.

In case any clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk. Sec. 12, Act of 1906.

Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded or kept under any and all of the provisions of the Act of June 29, 1906, shall be admitted in evidence equally with the originals in any and all proceedings under this act, and in

all cases in which the original thereof might be admissible as evidence. Sec. 28.

k. Records.

A duplicate of each declaration of intention shall be kept and filed by the clerk before whom the declaration is made. Sec. 12.

Declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered and made part of the records of the court. Sec. 14.

Petitions for naturalization shall be docketed the day they are filed. Sec. 6.

Every final order which may be made upon a petition for naturalization shall be under the hand of the court and entered in full upon a record kept for that purpose. Sec. 9.

Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate. Sec. 14.

The name, place of residence, and occupation of each witness whose testimony is required by law as to the facts of residence, moral character, and attachment of the applicant to the principles of the Constitution, shall be set forth in the record.

The renunciation by the applicant of hereditary title or order of nobility, if any, shall be recorded in the court.

For "cancellation of certificate," see "United States District Attorneys," page 34, post.

l. Fees.

Act of June 29, 1906.

"Sec. 13. The clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect,

and account for the following fees in each proceeding:

“For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

“For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

“The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Immigration and Naturalization, and paid over to such Bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Commerce and Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

“In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpoenaing and paying the legal fees of any witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided*, That the clerks of courts exercis-

ing jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said Bureau as in case of other fees to which the United States may be entitled under the provisions of this Act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this Act upon the clerks of courts from fees received by such clerks in naturalization proceedings. And in case the clerk of any court collects fees in excess of the sum of six thousand dollars in any one year, the Secretary of Commerce and Labor may allow to such clerk from the money which the United States shall receive additional compensation for the employment of additional clerical assistance, but for no other purpose, if in the opinion of the said Secretary the business of such clerk warrants such allowance.”*

“Sec. 20. That any clerk or other officer of a court having power under this Act to naturalize aliens, who wilfully neglects to render true accounts of moneys received by him for naturalization proceedings or who wilfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by

*All fees provided for in Section 13 of the Act of June 29, 1906, collected by clerks of courts during any quarter of a fiscal year, shall be accounted for within thirty days after the close of such quarter, on Form 2212, provided for that purpose; and one-half of all moneys so collected shall be remitted to the Chief of the Division of Naturalization, Bureau of Immigration and Naturalization, with said quarterly accounts. In cases where no naturalization business is transacted during any quarter, said blank form shall be forwarded as aforesaid, with the words “No transactions” noted thereon. Nat. Reg., Oct. 2, 1906.

imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

"Sec. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, or* to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment."

E. United States District Attorneys.

Duties.

1. Appearance in Opposition to Naturalization.

The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

2. Proceedings to Set Aside or Cancel Certificates of Citizenship.

It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may

* Error in original act. The word "or" should be omitted.—AUTHOR.

reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days' personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or the place where such suit is brought.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws. Sec. 15, Act June 29, 1906.

Section 15, paragraph 2, of the Act provides that if any alien who shall have secured a certificate under the provisions of the law shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered *prima facie* evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice

with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

F. Bureau of Immigration and Naturalization.

1. In General.

While the constitutional provision expressly conferring on Congress "Power to establish a uniform rule of naturalization," clearly authorized Congress to provide for the effective supervision and control of naturalization by the Federal Government, there was no legislation effecting that object until the enactment of the law of June 29, 1906, 34 Stat. at L. 596.

This law changes the designation of the Bureau of Immigration in the Department of Commerce and Labor to the "Bureau of Immigration and Naturalization," and provides that said Bureau, under the direction and control of the Secretary of Commerce and Labor, "shall have charge of all matters concerning the naturalization of aliens."

2. Functions of Secretary of Commerce and Labor.

a. Direction and Control of Bureau.

The Secretary of Commerce and Labor is charged by this law with "the direction and control" of the Bureau of Immigration and Naturalization. Sec. 1.

The statute (Sec. 2) authorizes the Secretary of Commerce and Labor "to provide the Bureau of Immigration and Naturalization with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this Act upon such Bureau."

b. Rules and Regulations.

Section 28 of the Act authorizes the Secretary of Commerce and Labor "to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of the Act."

c. Blank Certificates of Citizenship.

It is the duty of the Secretary of Commerce and Labor to cause to be engraved, on distinctive paper, blank certificates of citizenship (Sec. 17), which shall be furnished clerks of courts having jurisdiction in naturalization matters. Sec. 12, par. 3.

d. Certificate of Registry of Alien.

The law (Sec. 1) makes it the duty of commissioners of immigration to cause to be granted to every alien arriving in the United States after the passage of the Act of June 29, 1906, a certificate of registry giving particulars as to name, age, occupation, personal description, place of birth and residence of such alien, and the name of the vessel in which he comes.

Section 4, paragraph 2, of the Act provides that the applicant for naturalization shall at the time of filing his

petition file with the clerk a "certificate from the Department of Commerce and Labor," stating the date and manner of his arrival in this country.

e. Allowance of Additional Compensation to Clerks.

The Secretary of Commerce and Labor is authorized in cases where the clerk of any court collects fees in excess of the sum of six thousand dollars in any one year to allow to such clerk from the money which the United States shall receive additional compensation for the employment of additional clerical assistance, if, in the opinion of the Secretary, the business of such clerk warrants such allowance. Sec. 13, par. 5.

3. Functions of Bureau.

a. Supervision of Naturalization.

The Bureau of Immigration and Naturalization, under the direction and control of the Secretary of Commerce and Labor, has "charge of all matters concerning the naturalization of aliens." Sec. 1.

b. Registry of Aliens Arriving in United States.

The law makes it the duty of the Bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act of the name, age, occupation, personal description (including height, complexion, color of hair, and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and,

if entered through a port, the name of the vessel in which he comes.

c. Blank Certificates of Citizenship.

The Bureau of Immigration and Naturalization is to furnish clerks of courts having and exercising jurisdiction in naturalization matters, blank certificates of citizenship, and to require said clerks to account for all such blank certificates. Sec. 12, par. 3.

d. Naturalization Fees.

The law (Sec. 13, par. 4) makes it the duty of the Bureau to pay over to the disbursing clerk of the Department of Commerce and Labor, naturalization fees, which, under the law, clerks of courts are required to account for, and pay over to said Bureau.

4. Commissioners of Immigration.

The Act (Sec. 1) makes it the duty of commissioners of immigration to cause a registry to be made in the case of each alien arriving in the United States from and after the passage of the act, of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes.

The law also makes it the duty of commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

The certificate of registry here described is to be signed by the head of the Department of Commerce and Labor for the time being; and is the certificate referred to in Section 4, paragraph 2 of the Act as "a certificate from the

Department of Commerce and Labor," which the applicant for naturalization is required to file with the clerk of the court at the time of filing his petition.

5. Disbursing Clerk, Department of Commerce and Labor.

a. Duty as to Naturalization Fees.

It is the duty of the disbursing clerk of the Department of Commerce and Labor to receive from the Bureau of Naturalization and deposit in the Treasury of the United States, rendering an account therefor quarterly to the auditor for the state and other departments, naturalization fees which, under the law, clerks of courts are required to account for and pay over to said Bureau.

b. Bond.

The said disbursing clerk shall be held responsible under his bond for the fees so received. Sec. 13.

(G) Who are capable of naturalization.

1. In General.

All aliens are not eligible to citizenship under our naturalization laws. What persons are capable of naturalization?

In all the acts of Congress on the subject, from that of 1790 down to the Revised Statutes (Sec. 2169), the language is "that *any alien, being a free white person*, may be admitted to become a citizen." After the adoption of the Thirteenth Amendment to the Constitution, prohibiting slavery, and the Fourteenth Amendment, declaring who shall be citizens, Congress, by the Act of July 14, 1870 (16 Stat. at L. 254), amending the naturalization laws, extended the privilege of naturalization to the negro. The language of the Act of 1870, was: "The naturalization laws are hereby extended to aliens of African nativity, and to persons of African descent."

This was subsequently revised and placed in the Revised Statutes, Section 2169 (U. S. Comp. Stat. 1901, 1333) so as to read: "The provisions of this title shall apply to aliens [being free white persons, and to aliens] of African nativity, and to persons of African descent." This is the law now in force.

Who are excluded from the privilege of naturalization by the language of the statute? The words of a statute are to be taken in their ordinary sense, unless it can be shown that they are used in a technical sense. Taken in their ordinary meaning, the words of the law exclude all but persons of the Caucasian and African races. From a common, popular standpoint, the races of mankind have been distinguished by difference of color, and they have been classified as the white, black, yellow, and brown. As ordinarily used everywhere in the United States, the words "white person" mean a person of the Caucasian race.

Ethnologists also consider the color of skin the most important criterion for the distinction of race. Blumenbach divided mankind into five principal types—the Caucasian, or white, Mongolian or yellow, Ethiopian or black, American or red, and Malay or brown. Cuvier simplified this classification into Caucasian, Mongol, and Negro, or white, yellow, and black races.

When the words "white persons" were incorporated in the naturalization laws, in 1802, the country was inhabited by three races—the Caucasian or white race, the Negro or black race, and the American or red race. It is reasonable to infer, therefore, that Congress in designating the classes of persons who could be naturalized, intended to exclude from the privilege of citizenship all alien races except the Caucasian.

Again, in the first revision of the statutes, in 1873, the words "being a free white person" were omitted,

probably through inadvertence, so that the section read: "An alien may be admitted to become a citizen," etc. Under the act of February 18, 1875 (18 Stat. at L. 318, chap. 80, U. S. Comp. Stat. 1901, 1333), to correct errors and supply omissions in the first revision, this section was amended by restoring these words. In moving the adoption of this amendment in the House of Representatives it was stated that this omission operated to extend naturalization to all classes of aliens, and that it was only proposed, by restoring these words, to place the law where it stood at the time of the revision. 3 Cong. Record, pt. 2, 1081.

Whether viewed in the light of the popular or of the scientific meaning, or of Congressional intent, therefore, the words "white persons" seem to include only individuals of the Caucasian race. Under the statute, therefore, only members of this race and of the Ethiopian race can be naturalized.

The courts have at different times held that neither Chinese, Japanese, Hawaiians, Burmese, nor Indians can be naturalized.

2. Chinese.

The question of the right of a court to naturalize a Chinaman came before the circuit court of the United States in 1878, in *Re Ah Yup*, 5 Sawy. 155, Fed. Cas. No. 104, and the court denied the application, on the ground that a Mongolian is not a "white person" within the meaning of the term as used in the naturalization laws of the United States.

In an instruction, October 29, 1878, to Mr. Holcombe, United States minister to China, Mr. Evarts, adverting to this case, said: "Although not accepting as a final decision (not having yet been affirmed by the Supreme

Court of the United States), the Department is constrained, on examination of the laws, to believe that the decision is based on a sound appreciation of the law." MSS. Inst. to China.

Some courts having admitted Chinese to citizenship, the Act of May 6, 1882 (22 Stat. at L. 61, Chap. 126, Section 14, U. S. Comp. Stat. 1901, 1333), in order to prevent such naturalization, and to remove all doubt, provided "that hereafter no state court or court of the United States, shall admit Chinese to citizenship; and all laws in conflict with this Act are hereby repealed."

In the case of *Re Hong Yen Chang*, 84 Cal. 163, 24 Pac. 156, it was held that a certificate of naturalization showing the naturalization of a person of Mongolian nativity by the judgment of a court is void. To the same effect is *Re Gee Hop*, 71 Fed. 274. In the first case, a naturalization certificate had been granted by a New York court, and in the latter a New Jersey court had issued the certificate.

In *Fong Yue Ting v. United States*, 149 U. S. 716, 37 L. ed. 914, 13 Sup. Ct. Rep. 1016, the United States Supreme Court said: "Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws."

And in *United States v. Wong Kim Ark*, 169 U. S. 649, 42 L. ed. 890, 18 Sup. Ct. Rep. 456, Chief Justice Fuller said: "They (the Chinese) have never been allowed, by our laws, to acquire our nationality."

3. Japanese.

In the case of *Re Saito*, 62 Fed. 126, the United States Circuit Court held that a native of Japan (of the Mongolian race) is not included within the term "white persons," in Rev. Stat. Sec. 2169 (U. S. Comp. Stat. 1901, 1333), and hence is not entitled to naturalization.

In *In re Yamashita* (Wash.), 59 L. R. A. 671, 70 Pac. 482, a native of Japan applied for admission, as an attorney, in the courts of the State of Washington, whose laws preclude the admission of any person who is not a citizen of the United States. Yamashita had obtained from the superior court of Pierce County, Washington, an order admitting him to citizenship. It was held that the judgment upon its face showed that Yamashita was of the Japanese race; that Japanese are not entitled to become citizens of the United States; that, as the court was without authority to pronounce the judgment, its determination was void, and must be disregarded. It was decided that he could not be admitted.

It was claimed in the recent controversy caused by the exclusion of Japanese from San Francisco schools that Japanese are not Mongolians. But as it does not appear to be claimed that they belong to either the Caucasian or African race it is not seen that they are placed in any better position under our statute.

4. Burmese.

The city court of Albany, New York, decided against the naturalization of a dark yellow native of Burmah, although he was an educated physician. *Re San C. Po*, 7 Misc. 471, 28 N. Y. Supp. 383. In the opinion the court said:

"Burmese are Malays and under modern ethnological subdivisions are Mongolians, . . . and are not, therefore, within the strict letter of the Act of 1882, which prohibited the admission of Chinese to citizenship, for one can be a Mongolian and yet not be a Chinaman; but the petitioner falls squarely within the provision of Section 2169 of the United States Revised Statutes which limits naturalization to free white persons and to persons of

African nativity and of African descent, for he is certainly neither."

5. Hawaiians.

In *Re Kanaka Nian*, 6 Utah, 259, the Supreme Court of Utah denied the application of a native Hawaiian for admission to citizenship, holding that the applicant was neither a *white person nor a person of the African race*. The court said: "We are of opinion that the law authorizes the naturalization of aliens of the Caucasian or white race and of the African race only, and all other races, among which are the Hawaiians, are excluded."

This was prior to the annexation of Hawaii to the United States. Congress, by the Act of April 30, 1900, providing a government for the territory of Hawaii, declared that "all persons who were citizens of the Republic of Hawaii, on August 12, 1898, are citizens of the United States."

6. Indians.

The general statutes of naturalization do not apply to American Indians. 7 Ops. Atty. Gen. 746.

The Civil Rights Act, in defining citizens, expressly excluded "Indians not taxed." And while the citizenship clause of the Fourteenth Amendment omits this phrase, an examination of the debates in Congress when the Amendment was under consideration shows that the words were omitted as unnecessary, such persons not being deemed to be "subject to the jurisdiction of the United States."

In *In re Burton*, 1 Alaska, 111, it was decided that an Indian, a native of British Columbia, was not a "free white person or an alien of African nativity or of African descent," and hence was not capable of naturalization under the statute.

It has also been decided that a person of *half white*

and half Indian blood is not entitled to admission to citizenship under our general naturalization statutes, such person not being a "white person" within the purview of the law. In *re Camille*, 6 Sawyer, 541.

Indians are capable of naturalization by treaty and by special law, however, and citizenship has been frequently bestowed upon them in these ways. *Elk v. Wilkins*, 112 U. S. 94; *Boyd v. Thayer*, 143 U. S. 135.

7. Mexicans.

In the case of *Re Rodriguez*, 81 Fed. 337, the United States District Court for the Western District of Texas held that a native citizen of Mexico, whatever might be his status viewed solely from the standpoint of the ethnologist, is embraced within the spirit and intent of our naturalization laws. In this case it was contended that *Rodriguez* was excluded from the privilege of naturalization under Rev. Stat. 2169 because of his color, the authorities relied upon being: *Re Ah Yup*, 5 Sawy. 155, Fed. Cas. No. 104; *Re Camille*, 6 Sawy. 541, 6 Fed. 256; *Re Kanaka Nian*, 6 Utah, 259, 4 L. R. A. 726, 21 Pac. 993, and *Re Saito*, 62 Fed. 126.

The court analyzed the decision in *Ah Yup's* case, which is termed the leading one. It says that the opinion of Judge Sawyer is by no means decisive of the present question, as his language may well convey the meaning that the amendment of the naturalization statutes referred to by him (the amendment striking the word "white" therefrom) was intended solely as a prohibition against the naturalization of members of the Mongolian race. The court refers to the Act of May 6, 1882 (22 Stat. at L. 61, Chap. 126, U. S. Comp. Stat. 1901, 1333), expressly forbidding the naturalization of Chinese, and asks why, if the Chinese were denied the right to become naturalized citizens, under laws existing when *Re Ah Yup* was decided, did Congress enact this prohibitory statute?

Says the court: "Indeed, it is a debatable question whether the term 'free white person,' as used in the original Act of 1790, was not employed for the sole purpose of withholding the right of citizenship from the black or African race and the Indians then inhabiting this country." Continuing, the court says: "Nor is it deemed material to inquire into what race ethnological writers would assign the present applicant. If the strict scientific classification of the anthropologist should be adopted, he would probably not be classed as white. It is certain he is not an African nor a person of African descent. According to his own statement he is a 'pure-blooded Mexican,' bearing no relation to the Aztecs or original races of Mexico. Being, then, a citizen of Mexico, may he be naturalized pursuant to the laws of Congress? If debarred by the strict letter of the law from receiving letters of citizenship, is he embraced within the intent and meaning of the statute? If he falls within the intent and meaning of the law, his application should be granted notwithstanding the letter of the statute may be against him." The court then quoted from the Constitution of the Republic of Texas and the Constitution, laws, and treaties of the United States, which, it is said, disclose that both that Republic and the United States have freely, during the past sixty years, conferred upon Mexicans the rights and privileges of American citizenship—not individually, but by various collective acts of naturalization. He also quotes Rev. Stat., Section 1999 (U. S. Comp. Stat. 1901, 1269), recognizing the right of expatriation, and reciting that this government has freely received emigrants from all nations, and invested them with the rights of citizenship. He concludes: "When all the foregoing laws, treaties, and constitutional provisions are considered, which either affirmatively confer the rights of citizenship upon Mexicans, or tacitly recognize in them the right

of individual naturalization, the conclusion forces itself upon the mind that citizens of Mexico are eligible to American citizenship, and may be individually naturalized by complying with the provisions of our [naturalization] laws." The applicant was admitted to naturalization.

The fact that the United States has by collective acts conferred upon Mexicans the rights and privileges of American citizenship affords no basis for the argument that Mexicans are eligible to naturalization under our general naturalization statutes. See *Re Yamashita* (Wash.), 59 L. R. A. 671, 70 Pac. 482. In this case the applicant was ignorant, and was unable to read or write, and did not understand the principles of the Constitution, yet the court held, in the face of several decisions to the contrary, that he was entitled to be naturalized, inasmuch as it appeared that he was peaceable, industrious, of a good moral character, and law-abiding. The existing law, the Act of June 29, 1906, expressly requires that the applicant shall be able to write his name and speak the English language.

8. Porto Ricans and Filipinos.

In *In re Gonzales*, 118 Fed. 941, the Circuit Court of the United States for the Southern District of New York, in 1902, held that a native Porto Rican woman was an alien, within the meaning of our laws regulating the admission of aliens who come to the United States. But, on appeal, the Supreme Court reversed this decision and decided that the woman, who was a citizen of Porto Rico, was not an alien, within the sense of the immigration laws. *Gonzales vs. Williams*, 192 U. S., 1.

Under this decision, citizens of Porto Rico and citizens of the Philippine Islands, while not citizens of the

United States, were not aliens, and were not capable of becoming naturalized, for two reasons: 1. The naturalization laws of the United States apply only to aliens. 2. The naturalization laws of the United States require a renunciation of former allegiance. As citizens of Porto Rico and citizens of the Philippine Islands owed allegiance only to the United States, there was no former allegiance for them to renounce.

Under these circumstances Congress by the Act of June 29, 1906 (34 Stat. at L. 596, Sec. 30), provided for the admission of such citizens as citizens of the United States, upon compliance with our naturalization laws. The law reads as follows:

"All the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law."

9. Alien Enemies.

Alien enemies of the United States are incapable of naturalization. Section 2171 of the Revised Statutes declares that "No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty

with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States."

This provision, which is based on the language of the Act of April 14, 1802, was before the courts in the case of *Ex parte Overington* (1812), 5 Binney, 371. Overington applied for admission to citizenship under the Act of March 26, 1804, which provided that upon the death of an alien who had declared his intention to become a citizen of the United States, but had not completed his naturalization, his widow and children should be considered as citizens, upon taking the oaths prescribed by law. Overington's father, a subject of Great Britain, had been residing in the United States, with his son, from October, 1807, until his death in 1809. It was held, that as the father if living, would have come within the description of the Act of 1802, "an alien enemy," and would have been incapable of naturalization, the son could not be given rights of citizenship.

The Act of July 30, 1813, provided that persons resident within the United States on June 18, 1812, who had previously made a declaration of intention to become citizens of the United States, or were then entitled to become citizens, might be admitted to become citizens, notwithstanding they should be alien enemies, at the times and manner prescribed by the laws previously passed on that subject.

The case of *Ex parte Newman*, 1813, 2 Gallison, 11, raised the question whether a British subject could file a preliminary declaration of intention under the Act of July 30, 1813. The court said that the "act enables persons who before the war had made the preparatory declaration to become citizens in the same manner as if war had not intervened. But it confers no privileges on other persons. The petitioner, therefore, can not exempt himself from the general disability."

10. Women—The Naturalization Laws Include Females as Well as Males.

a. In General.

In the case of *Brown v. Shilling*, 9 Md. 74, where a woman had been naturalized after the death of her husband, the court declared that there was nothing in the naturalization acts that should be construed as excluding women from the right of citizenship by naturalization.

Mr. Evarts, when Secretary of State, declared that “an alien *woman* may be naturalized under the laws of the United States in the same manner and under the same conditions that pertain to the naturalization of an alien man. Citizenship does not involve the electoral qualification. The question is so well settled and the instances of women having been naturalized are so numerous that it is deemed unnecessary to cite you any particular cases.” 3 Moore’s Int. Law Digest, 331.

In *Minor v. Happersett*, 21 Wall. 162, the court said that “it is apparent that from the commencement of legislation upon this subject alien women and alien minors could be made citizens by naturalization.”

b. Married Women.

It has also been decided that an *alien wife* might be naturalized, and there are numerous recorded instances of such naturalizations. *Ex parte Pic*, 1 Cranch. C. C. 372, where the naturalization was in the United States Circuit Court for the District of Columbia, and *Priest vs. Cummings*, 16 Wend. 617.

In *Priest vs. Cummings*, which was decided in 1839, the wife, a British subject, married to a native citizen of the United States, took out naturalization papers as a citizen of the United States during the life of her husband and while living with him. In the course of the opinion, the court said: “It will not be denied that Congress possesses the power to naturalize *femes covert*, even against

the consent of their husbands; and the language used by that body could not well be made more comprehensive—‘*any alien, being a free white person, may be admitted to become a citizen of the United States.*’

. . . The practice, I believe, has been universal to admit *femes covert* to citizenship upon application.” This decision, on appeal, was affirmed as to the question of citizenship, though reversed on other grounds. 20 Wend. 338.

The statement of the court, in this case, that a married woman can be naturalized, even against the consent of her husband, is dictum, and its correctness, from a legal standpoint, is doubted.* Indeed, it seems questionable whether, in view of the almost universal doctrine that the citizenship of a woman during marriage is merged in that of her husband, a married woman can, while the marriage status lasts, independently secure naturalization. No case in which this question has squarely been presented appears to have come before the courts. In passing upon the question whether a declaration of intention to become a citizen of the United States could be made before the clerk of the court at the private residence of the applicant, who was the actress, Mrs. Langtry, Mr. Justice Field, in circuit, made this statement:

“*Note by the court.*—It is stated in the public journals that Mrs. Langtry is not a feme sole, and that her hus-

* It does not appear in this case that the husband was unwilling for his wife to become naturalized. When the decisions in *Priest v. Cummings* were rendered (1839 and 1840), the common law rule that the marriage of an alien woman to a citizen did not affect her citizenship still generally prevailed. The wife in this case simply availed herself of our naturalization laws to adopt her husband’s American citizenship. Such a proceeding became unnecessary after the passage of the statute of 1855, which enacted that an alien woman married to a citizen herself becomes a citizen if she was herself capable of naturalization. *Kelly v. Owen*, 7 Wall. 496.

band is living in England, and a subject of the Queen. If this be so, the question will arise on her application for final naturalization papers, whether she can be naturalized in this country. No person can be a citizen of two countries; and the wife is by law a citizen of her husband's country." In re Langtry, 1887, 31 Fed. 879, 880.

And to the inquiry of a person "whether the British Government would recognize the naturalization papers of a former British subject, an English woman, who was naturalized in the United States without the consent of her husband," the Department of State, on October 3, 1896, replied that the writer should consult private counsel learned in the law of Great Britain. 3 Moore's Int. Law Digest, 454.

It was said in the case of *Comitis v. Parkerson*, 56 Fed. 556, however, that the relation of husband and wife is not inconsistent with one being a citizen and the other being an alien.

11. Anarchists and Polygamists.

Section 7 of the Act of June 29, 1906, which, with the substitution of the words "or who is a polygamist," for the phrase "or who has violated any of the provisions of this act," substantially re-enacts the first sentence of Section 39 of the Act of March 3, 1903 (32 Statutes at Large, 1222), provides that "no person who disbelieves in or who is opposed to organized government, or who is a member of, or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is

a polygamist, shall be naturalized or be made a citizen of the United States."

(H.) Usual Legal Conditions.

The usual conditions of naturalization in the United States are:

1. A declaration of intention to become a citizen.
2. A petition for naturalization.
3. Residence.
4. Qualifications as to age, education, and moral character.
5. Renunciation of order of nobility or hereditary title, if any.
6. Oath of allegiance, and renunciation of prior allegiance.

1. Declaration of Intention.

The first step in the process of naturalization is the declaration of intention to become a citizen.

The Act of June 29, 1906, 34 Stat. at L. 596, Sec. 4, par. 1, provides that the alien "shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present

place of residence in the United States of said alien: *Provided, however*, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration."

a. Time of Making.

As to the time of making the declaration, it may be made immediately after the arrival of the alien in this country. It must be made at least two years before his admission to citizenship. Sec. 4, par. 1.

The declarant must be at least eighteen years of age. *Id.* Until the enactment of the Act of June 29, 1906, application to be admitted to citizenship could be made at any time after the lapse of two years from the date of the declaration of intention; but that act limits the life of a declaration of intention to seven years. The theory of the law is that one who does not, within seven years, carry out his formally expressed intention, must be deemed to have abandoned such intention, and should be required to begin his probation again. The provision was designed to prevent the abuse of our citizenship by large numbers of aliens who under the old law were enabled to enjoy most of the rights of citizens, including political rights, and who designedly refrained from completing their naturalization that they might avoid military duty and service as jurors.

b. Before Whom Made.

The declaration of intention must be made before the clerk of a court authorized by the Act of June 29, 1906, to naturalize aliens, or his authorized deputy.*

* On and after September 27, 1906, declarations of intention to become citizens of the United States shall be filed with the clerks of such State courts only as have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity in which the amount in controversy is unlimited." Nat. Reg., Oct. 2, 1906.

As to what courts are authorized to naturalize, see Sec. 3, par. 2 of Act, and page 11 ante, where that subject is fully treated; and also Appendix, post, wherein is contained a complete list of the courts having jurisdiction to naturalize in the United States.

The declaration must be made in the district in which the alien resides. Sec. 4, par. 1 of Act. This means the judicial district of the court.

The words "before the clerk," mean before the clerk either in the clerk's office or in open court. In *re Langtry*, 31 Fed. 879; *Sto. Scola's Case*, 8 Pa. Co. Ct. 344.

As to the meaning of the phrase "before the clerk," in *Andres v. Arnold*, 77 Mich., 85, a case arising under the provision of Section 2165 of the Revised Statutes, it was held that it was sufficient if the declaration was made before the clerk out of his office, and became a part of his records when filed.

But in the case of *Re Langtry*, 31 Fed. 879, where the clerk of the United States Circuit Court had taken the necessary records and seal of the court to the private residence of Mrs. Langtry and received her declaration of intention there, the court (Mr. Justice Field), held that the declaration must be made either in the clerk's office or in open court. The court said that persons seeking the great privilege of American citizenship ought to consider it of sufficient value to attend where the records of the court are held in proper legal custody. The justice called attention to the fact that in some states a man is allowed to vote as soon as he makes his declaration of intention to become a citizen, and said that, if a clerk of the court, or his deputy, could go around the country taking declarations of intention and administering oaths, dangerous consequences might follow. He said that Congress, in authorizing the declaration to be made before the clerk, could not have contemplated the granting of authority to clerks to remove records from the proper

place of their custody for the accommodation of parties.

The same view was reached in *Sto. Scola's Case*, 8 Pa. Co. Ct. 344.

The declaration can not be made before a court having no clerk; *Ex parte Cregg*, 2 Curtis, 98.

c. Form of Declaration of Intention.

The statute (Act of June 29, 1906), Section 4, paragraph 1, provides that the declaration shall be "on oath." For judicial decisions relative to the taking of oaths upon making declaration of intention under the old statutes, see *McDaniel v. Richards*, 1 McCord, 187; and *U. S. v. Walsh*, 22 Fed., 644.

The declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien. *Id.* Sec. 4, par. 1.

The applicant shall declare that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. *Id.*

None of the prior laws prescribed a form, but the Act of 1906, Section 27, prescribes the form of the declaration of intention, which must, substantially, be used. This form is as follows:

DECLARATION OF INTENTION.*

(Invalid for all purposes seven years after the date hereof.)

....., ss:

I,....., aged.....years, occupation....., do declare on oath (affirm) that my personal description

*See note, next page.

is: Color....., complexion....., height....., weight
, color of hair....., color of eyes....., other
 visible distinctive marks.....; I was born in.....on
 the.....day of....., anno Domini.....; I now reside
 at.....; I emigrated to the United States of America
 from.....on the vessel.....; my last foreign resi-
 dence was.....It is my bona fide intention to renounce
 forever all allegiance and fidelity to any foreign prince,
 potentate, state, or sovereignty, and particularly to
, of which I am now a citizen (subject); I arrived
 at the (port) of....., in the State (Territory or Dis-
 trict) of.....on or about the.....day of.....anno
 Domini.....; I am not an anarchist; I am not a polyg-
 amist nor a believer in the practice of polygamy; and it
 is my intention in good faith to become a citizen of the
 United States of America and to permanently reside
 therein. So help me God.

(Original signature of declarant)*

Subscribed and sworn to (affirmed) before me this
day of....., anno Domini.....

[L. s.]

(Official character of attestor.)

The statute (Sec. 4, par. 1) contains a proviso relative to those who have, in conformity with the law in force when they made their declarations, declared their intention to become citizens, in this language: "Provided, however, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States, shall be required to renew such declaration."

In view of this proviso, the Secretary of Commerce and Labor, in pursuance of the power vested in him by

* The names of aliens making declarations of intention, or filing petitions for naturalization, must be entered in full in the appropriate places on the various blank forms, without abbreviation, and the signatures of

Sec. 28 of the Act of 1906, made the following naturalization regulations, under date of October 2, 1906:

"Declarations of intention made prior to September 27, 1906, before clerks of courts having jurisdiction to naturalize aliens under the provisions of the law existing at the time such declarations were made may be used in lieu of the declarations required by the Act of June 29, 1906, at any time after the expiration of two years from the date when made.

"Aliens who have made declarations of intention prior to September 27, 1906, under the provisions of law in force at the time of making such declarations, can not be required, as a preliminary to filing their petitions for naturalization, to file new declarations of intention under the Act of June 29, 1906; nor are such aliens required, as a condition precedent to naturalization, to speak the English language."

d. Difference Between Provisions of Act of 1906 and Sec. 2165 of the Revised Statutes Relative to Declaration of Intention.

The first difference to be noted between the provisions of Sec. 2165, Rev. Stat., and the existing law, is in the *courts* which may receive the declaration. Under Section 2165 the declaration could be made before any court having jurisdiction to naturalize aliens, without reference to the *place of residence* of the declarant. Under the Act of June 29, 1906, it can be made only before a court authorized to naturalize aliens, "*in the district in which such alien resides.*"

As to the courts authorized to naturalize, under the Act of 1906, see p. 11 (*supra*), "What courts are authorized to naturalize."

The second difference is in relation to the *age* of the declarant. Under Section 2165 the declaration could not

such aliens must also be written out without abbreviation. Great care should be taken to get in every case the correct spelling of names. Nat. Reg. of Oct. 2, 1906.

be made until the applicant had reached the age of twenty-one years. Under the Act of June 29, 1906, it may be made at any time after the alien reaches the age of eighteen.

The third difference is in relation to the life of the declaration of intention. Under Section 2165 application for final naturalization could be made at any time after the two year period from the date of the declaration had elapsed. Under the existing law the petition for admission to citizenship must be made "not more than seven years after he (the alien) has made such declaration of intention." Act of June 29, 1906, Sec. 4, par. 2.

It may be observed that, of course, only aliens who are capable of naturalization under our laws can make formal declaration of intention to become citizens.

Clerks of courts shall not receive declarations of intention to become citizens from other aliens than white persons and persons of African nativity or of African descent. Nat. Reg. of Oct. 2, 1906.

e. Porto Ricans and Filipinos.

By section 30 of the Act of 1906, however, citizens of Porto Rico and citizens of the Philippine Islands, though owing permanent allegiance to the United States, and hence not aliens, are authorized to become naturalized and to make their declaration of intention two years prior to admission. The provision is as follows:

"All the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his

admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law."

f. Exceptions to the Usual Requirement of Declaration of Intention.

There are several exceptions, by special provision of law, to the requirement of declaration of intention.

(A.) Army.

Section 2166 of the Revised Statutes reads as follows:

"Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States."*

*Under section 2166 of the Revised Statutes, an honorably discharged soldier, who is of the age of 21 years and upward, may be admitted to become a citizen of the United States without making the declaration of intention required of other aliens. Also, under the provisions of the Act of July 26, 1894, chapter 165, any alien, of the age of 21 years and upward, who has enlisted, or may enlist, in the United States Navy or Marine Corps, having been honorably discharged therefrom, after a residence of five years may be admitted to become a citizen of the United States without making the declaration of intention required of other aliens. Clerks of courts are therefore instructed to appropriately note upon the petition of such discharged alien soldier or member of the Navy or Marine Corps, and upon the stub of the certificate of naturalization

(B.) Navy and Marine Corps.

The Act of July 26, 1894, 28 Stat. at L. 124, provides that any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps.*

(C.) Widow and Children of Deceased Declarant.

Sec. 4, par. 6, of the Act of June 29, 1906, provides:

When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaration of intention.

(D.) Minor Residents.

Prior to the passage of the Act of 1906, minor aliens coming to this country at the age of eighteen years or under, were allowed, under the provisions of Section 2167 of the Revised Statutes, to be admitted to naturalization after reaching majority and after five years' residence

issued to him, in lieu of the information required thereon as to the filing of the declaration of intention, that the petitioner was an honorably discharged alien soldier, or member of the Navy or Marine Corps, and applied for citizenship under the said Section 2166, or the Act of July 26, 1894. Nat. Reg. of Oct. 2, 1906.

*See note, page 61.

here, without having made the declaration required by Rev. Stat. 2165, the applicant being required at the time of his admission to make the declaration, and to further declare on oath and prove to the satisfaction of the court that for two years next preceding, it had been his bona fide intention to become a citizen of the United States.

Repeal of "Minor's Clause."—But, as a majority of the naturalization frauds perpetrated were committed under the provisions of this section of the statutes, which was known as the "Minor's Clause," the section was repealed by the Act of June 29, 1906, and the existing law provides for the making of declaration of intention by minors after they have reached the age of eighteen years.

(E.) In Hawaii.

By the Act of April 30, 1900, the previous declaration of intention was dispensed with in the case of persons applying to be naturalized in Hawaii, who had resided there at least five years prior to the taking effect of the Act.

(F.) In the Philippine Islands and Porto Rico.

By the Act of June 29, 1906 (Sec. 30), residence within the Philippines or Porto Rico is to be regarded as residence within the United States within the meaning of the five years' residence clause of the naturalization law, with respect to citizens of those islands. The language of the law is:

"That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required

to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law."

g. Rights Conferred by Declaration of Intention.

(A.) Under Federal laws.

One who has declared his intention to become a citizen may, under the preemption and homestead laws of the United States, preempt and acquire public lands. Rev. Stat. 2259, 2289.

(B.) Under state laws.

He may, under state laws, vote at all elections, state or national, in Arkansas, Indiana, Kansas, Missouri, Nebraska, South Dakota, Texas, Oregon, and Wisconsin. Under the laws of Delaware, Kentucky, New York, and Washington he enjoys rights in the acquisition of real property that other aliens do not enjoy. In some states he may be employed upon public works and other aliens may not.

(C.) Citizenship not conferred by.

Mere declaration of intention does not confer citizenship upon the declarant. The declaration is merely an expression of purpose, and has not the effect, either of naturalization or expatriation. By it, the alien simply records his intention to renounce his present allegiance on becoming a citizen of the United States. He remains an alien until naturalization is complete according to our laws. *Lanz v. Randall*, 4 Dill. 425; *Maloy v. Duden*, 25 Fed. 673; *Re Moses*, 83 Fed. 995.

The law, justly regarding a change in his allegiance by a foreigner as an act of grave importance, wisely provides that there shall be two steps in the process. By the first, the purpose of change is announced. Between this and actual naturalization the lapse of a considerable interval is required in order that the final step may be taken with due deliberation. For. Rel. 1871, 253, Sec'y Fish to Mr. Wing, Inst. to Ecuador.

From the standpoint of the government, also, it is undesirable that persons inexperienced in our institutions should take part in matters which they do not understand. The period of probation is designed to afford them an opportunity to become familiar with our mode of government, and to fit themselves for the performance of the duties of citizenship. Upon final hearing, the court, for good reasons, may refuse to complete the naturalization.

Does the declaration of intention confer the rights of citizenship upon an alien? While the laws of several of the states of the Union extend the right of suffrage to aliens who have declared their intention to become citizens of the United States, a state can not make the subject of a foreign government a citizen of the United States, or confer on him the rights and privileges appertaining to such citizenship.

As is said by the Circuit Court of the United States in the case of *Minneapolis v. Reum*, 6 C. C. A. 31, 12 U. S. App. 446, 56 Fed. 580: "A state may confer on foreign citizens or subjects all the rights and privileges it has the power to bestow, but when it has done all this, it has not naturalized them. They are foreign citizens or subjects still, within the meaning of the Constitution and laws of the United States." See, also, *Boyd v. Nebraska*, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375; *In re Moses*, 83 Fed. 995; *White v. White*, 2 Met. (Ky.) 185; *Dorsey v. Brigham*, 177 Ill. 250.

A mere " declaration of intention " by a foreigner to become a citizen does not deprive a court of the United States of jurisdiction over a suit to which he is a party—as a suit against a foreign citizen or subject. The final renunciation of his foreign allegiance is necessary. *Baird v. Byrne*, 3 Wall. Jr. 1, Fed. Cas. No. 757.

Is a person who has declared his intention to become a citizen clothed with the rights of citizenship while without the United States? Upon principle, it seems clear that this question should be answered in the negative. As he is not a citizen, and is not invested with the rights of Federal citizenship while in the United States, it is not perceived upon what ground he can claim the privileges of American citizenship while in a foreign country.* As we have seen, the declarant does not renounce his original allegiance, but remains an alien until his naturalization is completed. If he goes back to his native country, he returns as a subject or citizen thereof.

By treaties with Austria, Baden, Bavaria, Hesse, North Germany, Sweden and Norway, and Württemberg, it is expressly provided that a declaration of intention to become a citizen shall not have the effect of naturalization.

It has been repeatedly held by the Department of State that the declaration of intention to become a citizen does not so clothe the individual with the nationality of this country as to enable him to return to his native land without being subject to all the laws thereof. 2 Wharton's. Int. Law Digest, 359.

Where declarant, a native Turk, contemplating a visit to Turkey, inquired whether he could count upon the intervention of this government in his behalf, Mr. Bayard held that, " so far as political rights are concerned, a mere declaration of intention to become a citizen of the United States would give . . . [declarant] no title to claim

*The Act of March 2, 1907, appears to contemplate a limited protection for these persons in certain exceptional circumstances. See p. 74, post.

the intervention of the United States should he return to his native land." 2 Wharton, International Law Dig. 360.

And in a similar case it was held: "Until the declarant has perfected his naturalization by due course of law, and obtained his final papers, he can not claim the protection of this government in case of his voluntary return to Turkey." Mr. Bayard to Mr. Crain, January 28, 1886, MSS. Dom. Let. See also, Mr. Hay to Mr. Bell, April 7, 1899, MSS. Dom. Let.

(i.) **Burnato's Case.**

With the exception of the case of Burnato, no instance is found where this government has intervened, in the country of his origin, in behalf of an alien who has merely declared his intention to become a citizen. This case is sometimes cited as a precedent for extending protection to such persons, but an examination of the correspondence shows that it is subject to considerable qualification. Burnato, a native of Mexico, came to Texas in 1866, and in 1872 declared his intention to become a citizen of the United States. In 1879 he was arrested by the Mexican authorities at Piedras Negras for smuggling liquor across the border, was tried and sentenced to five years' service as a soldier in the Mexican Army. In October, 1880, the impressment of Burnato and several others, citizens of the United States, having come to the notice of our government, the Department of State directed the United States Minister to demand of the Mexican government their instant release. "If the fact of Burnato's not being a citizen of the United States should be brought up by the Mexican government" (wrote Assistant Secretary Hunter) "you will suggest that for fourteen years he has been a permanent resident of this country, of which he had declared his intention to become a citizen, and has thus been under the protection of this government, its laws and treaties, and it would

seem very ungracious for the Mexican government to insist, under these circumstances, on making any unfavorable distinction in his case." Acting Sec'y Hunter to Mr. Morgan, For. Rel. 1880, 777.

Mr. Morgan in his note to the Mexican government refers to the men as "citizens of the United States," and it does not appear that the question of Burnato's citizenship was raised at all. It transpired that he had been dismissed from the army some months previous. Subsequently Mr. Morgan wrote the Department asking instructions in regard to demanding an indemnity, and expressing doubts as to Burnato's title to protection. The Department, under date of September 14, 1881, replied as follows: "Adverting to your inquiries respecting Felipe Burnato, one of the persons impressed, I have to state that he will not be entitled to the protection of this government without having acquired full citizenship." Acting Sec'y Hitt to Mr. Morgan, MSS. Dip. Inst. to Mexico.

Although a mere declaration of intent does not confer citizenship, yet, under peculiar circumstances in a Mohammedan or semi-barbarous land, it may sustain an appeal to the good offices of a diplomatic officer of the United States in such land. Sec'y Cass to Mr. De Leon, U. S. Consul General at Alexandria, Egypt, August 18, 1858.

(ii.) Koszta's Case.

In a few instances the Department of State has held that the declarant acquires, by his declaration of intention, a quasi right to the protection of this government while in a third country. Of these cases, the best known is that of Martin Koszta, in which an extreme position was taken by this Government. This case has been criticised, and has been explained and qualified by the Department of State. Koszta was an Austrian subject, who engaged in the Hungarian rebellion of 1848-9. At

the end of the rebellion he escaped to Turkey, whence he came to the United States. He remained in this country about two years, during which time he made the statutory declaration of intention to become an American citizen. He then returned to Turkey on business. He obtained from the United States consul at Smyrna a traveling pass, stating that he was entitled to American protection. While at Smyrna he was arrested by Austrian authorities and put on board an Austrian war vessel for conveyance to Trieste. He managed to communicate with the captain of an American war vessel which was lying in the same port. This officer demanded the release of Koszta. The Austrian commander refused. Thereupon the American officer trained his guns upon the Austrian vessel, and declared that if an attempt was made to leave the port with Koszta on board he would blow the vessel to pieces. As a conflict between the two ships would have been attended with great danger to the shipping in the port and to the town, the matter was temporarily settled by the delivery of the prisoner to the French consul, to be kept until the governments concerned should have an opportunity of arriving at a decision. The Austrian chargé d'affaires at Washington, Chevalier Hulsemann, presented a formal remonstrance to the United States Government, protesting against the claim of the United States of the right to afford protection to Koszta, and calling on them to disavow the conduct of their agents, and to grant reparation for the insult offered to the Austrian flag. Secretary Marcy replied, contending that, although Koszta had not yet been naturalized, he was at the time he was seized and imprisoned at Smyrna clothed with American nationality, and that in virtue thereof the Government of the United States was authorized to extend to him its protection at home and abroad. Mr. Marcy maintained that national character, according to the law of nations, depended

upon domicil, and that, as Koszta had a domicil in the United States, he was vested with American nationality. The matter was finally compromised by an arrangement between the American and Austrian legations at Constantinople, that Koszta should be shipped off to the United States, the Austrian government reserving the right to proceed against him should he be again found in Ottoman territory.

The position taken by Mr. Marcy, that mere domicil in the United States confers citizenship and the right to protection in another country, is held by such eminent writers on international law as Hall and Cockburn, to be untenable. The former (Hall, *International Law*, 5th ed., 243, 244) says: "Domicil no doubt imparts national character for certain purposes; but those purposes, so far as they have to do with public international law, are connected with the rules of war alone, and Mr. Marcy's contention was wholly destitute of legal foundation." And in a note on the same page the author further says that Mr. Marcy's doctrine was strangely inconsistent with the law of the United States at the period when he wrote, as at that time persons of foreign nationality, who had declared their intention of becoming citizens, were incapable of receiving United States passports, and consequently could not have been regarded as subjects. He refers to the passport given Koszta by the United States consul at Smyrna in contravention of the laws of the United States as obviously a mere piece of waste paper. Cockburn says: "The reasoning of Mr. Marcy, which is remarkable for its boldness in carrying the doctrine of acquired nationality further than it ever has been carried, and in which the effect of domicil in respect of civil consequences is confounded with its effect as to political consequences, is altogether inadmissible. Domicil, and even residence, in a particular country, entitles the party to the protection of that country only

so long as he is within it; and the effect of such a rule as that contended for by Mr. Marcy would be to introduce the most lamentable confusion into this branch of the public law. Naturalization is generally, and should be always, accompanied by some authentic act, which can be referred to, and which speaks authoritatively. But if mere domicile were to give the rights of citizenship, every case would necessitate a judicial inquiry upon a matter which every lawyer knows to be, depending, as it does, on intention, a question often most difficult of solution." Nationality, 122. Mr. Cockburn's opinion of the Koszta case is given in a brief note at the bottom of the page just given, as follows: "Both parties were equally in the wrong. The Austrians had no pretense of right for seizing Koszta on Turkish territory. . . . On the other hand, the American authorities had no right to claim Koszta as an American subject, as he had not become naturalized. The party really entitled to complain was the Ottoman government, which refused the application of the Austrians for leave to arrest Koszta, and protested against the outrage offered to their authority, but whose protest does not appear to have been heeded."

Just prior to, and during the Cuban insurrection of 1869, many Cubans declared their intention to become citizens of the United States, and after doing so returned to Cuba. The United States consul at Trinidad interfered in behalf of several of these persons, claiming that they were American citizens, and asked the Department to approve his action. This the Department declined to do, in the following instruction, dated May 12, 1869, in the course of which Mr. Marcy's note in the Koszta case was explained and qualified: "The late distinguished Secretary of State, Mr. Marcy, was very careful in his elaborate letter concerning the case of Martin Koszta not to commit this government to the obligation, or to

the propriety, of using the force of the nation for the protection of foreign-born persons who, after declaring their intention to become at some future time citizens of the United States, leave its shores to return to their native country. . . . He took special care to insist that the case was to be judged, not by the municipal laws of the United States, not by the local laws of Turkey, not by the conventions between Turkey and Austria, but by the great principles of international law. It is true that in the concluding part of that masterly despatch he did say that a nation might, at its pleasure, clothe with the rights of its nationality persons not citizens, who were permanently domiciled in its borders. But it will be observed by the careful reader of that letter that this portion is supplemental, merely, to the main line of the great argument. . . . To extend this principle beyond the careful limitation put upon it by Secretary Marcy would be dangerous to the peace of the country. It has been repeatedly decided by this Department that the declaration of intention to become a citizen does not, in the absence of treaty stipulations, so clothe the individual with the nationality of this country as to enable him to return to his native land without being necessarily subject to all the laws thereof. In the present unhappy state of things in Cuba the Secretary of State can see no reason for departing from so well-established and so wise a rule. . . . He earnestly exhorts you, and all other consuls of the United States, to spare no effort to protect the lives, the property, and the rights of American citizens in this emergency, and he will see with satisfaction any unofficial efforts you may make to shield the persons of those who have declared their intention to become citizens from the barbarities of the Spanish Volunteers, but he desires me to direct you hereafter in your official action to observe the rule laid down for your guidance in this

instruction." Mr. Davis, Asst. Sec'y to Mr. Fox, U. S. Consul Trinidad, S. Ex. Doc. 108, 41st Cong., 2d Session, 202, 203.

Secretary Olney in an instruction to the United States minister in China, January 13, 1897, said: "The somewhat extreme position taken by Mr. Marcy in the Koszta case, that the declarant is followed, during sojourn in a third country, by the protection of this government, has since been necessarily regarded as applying particularly to the peculiar circumstances in which it originated, and to relate only to the protection of such a declarant in a third country against arbitrary seizure by the government of the country of his origin. . . . It is established by the practical interpretation and application of domestic statutes, and by various treaties of naturalization concluded with foreign states, that a mere declaration of intention to become a citizen can not clothe the declarant with any of the international rights of citizenship." Mr. Olney to Mr. Denby, MSS. Dip. Inst. to China, For. Rel. 1896, 92. See, also, Secretary Hay to Mr. McKinney, March 20, 1899; and 3 Moore's Int. Law Digest, 336 et seq.

h. Declaration of Intention and Residence.

(A.) In General.

Declaration of intention and residence, however long continued, do not operate to confer citizenship upon an alien.

In *Lanz v. Randall*, 4 Dill. 425, where the declarant had resided in the United States fifteen years after making his declaration, it was decided that naturalization had not been effected.

And in *Johnson v. United States*, 29 Court of Claims, 1, where the applicant came to the United States at the age of thirteen years and made the declaration of intention after arriving at majority, it was held, when he had

resided in this country eighteen years, that he could acquire citizenship only by taking out his final papers.

(B.) Declaration of Intention and Three Years' Residence.

But the Act of Congress of March 2, 1907, authorizes the Secretary of State, "in his discretion," to issue passports to persons not citizens of the United States as follows:

"Where any person has made a declaration of intention to become such a citizen as provided by law, and has resided in the United States for three years, a passport may be issued to him entitling him to the protection of the government in any foreign country: Provided, that such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this Government in the country of which he was a citizen prior to making such declaration of intention."*

It is to be observed, first, that the issuance of a passport to such person is in the discretion of the Secretary of State; second, that, if issued, it is only good for six months and is not renewable; and, third, that it does not entitle the holder to protection in the country of origin or previous citizenship. See post, rules governing the issuance of passports to those who have declared their intention to become citizens.

It is believed that the occasions for the issuance of passports under this law should be very rare.

i. Merchant Seamen.

An exception is also made in our laws in the case of a seaman who declares his intention to become a citizen and serves on a merchant vessel of the United States. Sec-

* Section 4076, Revised Statutes, declared that "No passport shall be granted or issued to, or verified for, any other persons than citizens of the United States." This section was amended by Act of June 14, 1902 (32 Stat. at L., 386), so as to permit the issuance of passports to the loyal residents of the insular possessions of the United States.

tion 2174, Rev. Stat., provides that: "Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any Act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen."

This section of the Revised Statutes is Section 29 of the Act of June 7, 1872 (17 Stat. at L. 268, Chap. 322, U. S. Comp. Stat. 1901, 1334), which was entitled "An Act to authorize the appointment of shipping commissioners . . . to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen."

In the case of Gustav Richelieu, a native of France, who, in 1872, declared his intention to become a citizen of the United States, and subsequently served as seaman and steward on American merchant vessels for more than twenty years, it was held that he was entitled, under the provisions of Section 2174 (U. S. Comp. Stat. 1901, 1334), to the protection of the United States, and

a claim in his behalf for arbitrary arrest and imprisonment by the Spanish authorities in Cuba was presented to the government of Spain by the Department of State. Acting Secretary Rockhill to Mr. Taylor, August 31, 1896, MSS. Dip. Inst. to Spain. The Spanish Treaty Claims Commission, before which this claim subsequently came, made an award of \$5,000 in favor of Richelieu.

This does not extend to the naval service. *Ex parte Gormly*, 14 Phila. 211.

The Act of June 9, 1874 (18 Stat. at L. 64, Chap. 260, U. S. Comp. Stat. 1901, 3064), provides that none of the provisions of the Act of 1872 (Sec. 2174 U. S. Comp. Stat. 1901, 1334) "shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise or voyage."

j. Status Conferred upon Minors by Declaration of Intention of Parents.

What is the status of minor children of aliens who declare their intention to become citizens, but do not perfect their naturalization? Suppose an alien emigrates to the United States, bringing minor children with him, and in due time declares his intention to become a citizen, but fails to take out his final papers, what is the status of the children when they reach majority?

President Arthur, in his annual message in 1884, referred to this question, and recommended that Congress should "clearly define the status of minor children of fathers who have declared their intention to become citizens, but have failed to perfect their naturalization."

The question was presented to the United States Supreme Court in the case of *Boyd vs. Nebraska*, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375. Boyd was born in Ireland in 1834, of Irish parents, and brought to this country in 1844 by his father, who settled in Ohio, and, in 1849, declared his intention to become a citizen of the United States. There is no record or other written evidence that he ever completed his naturalization by taking out his naturalization certificate after the expiration of five years. For many years after the expiration of that period, however, he exercised rights and claimed privileges in Ohio, which could only be claimed and exercised by citizens of the United States and of the state. In 1855 the son voted in Ohio as a citizen, under the belief that his father had taken out his final naturalization papers. In 1856 he removed to Nebraska. In 1857 he was elected and served as county clerk of Douglass county; in 1864 he was sworn into the military service, and served as a soldier of the Federal Government to defend the frontier from an attack of Indians; in 1866 he was elected a member of the Nebraska legislature and served one session; in 1871 he was elected a member of the convention to frame a state constitution, and served as such; in 1875 he was again elected and served as a member of the convention which framed the present state constitution; in 1880 he was elected and acted as president of the city council of Omaha; and in 1881 and 1885, respectively, was elected mayor of that city, serving in all four years. From 1856 until Nebraska was admitted as a state, he voted at all elections, territorial, state, municipal, and national. He took the oath required by law in entering upon the duties of the offices he filled, and swore that he would support the constitution of the United States. In 1888, after thirty years of unquestioned exercise of the rights, privileges, and immunities of a citizen of the United States and of the territory and

state, he was elected governor of the state. He took the oath of office and entered upon the discharge of its duties. His predecessor, Thayer, as relator, filed an information in the Supreme Court of Nebraska, setting forth the facts as to the declaration of intention by Boyd's father, averring that the father did not become a citizen during the son's minority, and claiming that Boyd, the son, never having himself been naturalized, was not, at the time of his election, a citizen of the United States, and was not, under the constitution and laws of Nebraska, eligible to the office of governor of the state. The relator prayed judgment that Boyd be ousted from that office, and that the relator be declared entitled to it until a successor could be elected. The state court having decided in favor of Thayer, a writ of error was sued out to the Supreme Court of the United States. The court, in discussing the question of the status of minor children of persons who have declared their intention to become citizens, said: "Clearly, minors acquire an inchoate status by the declaration of intention on the part of their parents. If they attain their majority before the parent completes his naturalization, then they have an election to repudiate the status which they find impressed upon them, and determine that they will accept allegiance to some foreign potentate or power rather than hold fast to the citizenship which the act of the parent has initiated for them. Ordinarily this election is determined by application on their own behalf, but it does not follow that an actual equivalent may not be accepted in lieu of a technical compliance."

Under the law of the territory of Nebraska, citizens of the United States, and those who had filed their declaration of intention to become such, were citizens of the territory. The court said that Congress so regarded them, and in Section 3 of the enabling act (13 Stat. at L. 47), referred to them as citizens. The court declared that

all those who were citizens of the original states became, upon the formation of the Union, citizens of the United States, and that upon the admission of Nebraska into the Union "upon an equal footing with the original states, in all respects whatsoever," the citizens of what had been the territory became citizens of the United States and of the state. The court concluded: "We are of opinion that James E. Boyd is entitled to claim that, if his father did not complete his naturalization before his son had attained majority, the son can not be held to have lost the inchoate status he had acquired by the declaration of intention, and to have elected to become the subject of a foreign power, but, on the contrary, that the oaths he took and his action as a citizen entitled him to insist upon the benefit of his father's act, and placed him in the same category as his father would have occupied if he had emigrated to the territory of Nebraska; that, in short, he was within the intent and meaning, effect and operation of the acts of Congress in relation to citizens of the territory, and was made a citizen of the United States and of the State of Nebraska under the organic and enabling acts and the act of admission." *Id.*

In the somewhat similar case of *Trabing v. United States*, 32 Ct. Cl. 440, the court said that the status which a minor acquires by the declaration of intention of his parents is only an inchoate status. "If he attains his majority," said the court, "before his father completes his naturalization, he has an election to repudiate the status and determine whether he will render allegiance to the United States or to the foreign potentate or power of the country where he was born." In that case there was nothing to evidence the election of American citizenship by the claimant upon attaining his majority. He did not vote, but remained in his status until the year 1892 (when he was fifty years of age), when he applied for naturalization and obtained a decree. "If he had

voted and held office [said the court], and performed all the duties of citizenship in the active and unequivocal manner of the respondent in *Boyd v. Nebraska*, there would be good reason to say, as his counsel says, that obtaining naturalization in 1892 was for the purpose of obtaining some precise evidence of naturalization so that his status as a citizen could not be questioned. But, taken with the negative facts of this case—the facts that he was not born a citizen of the United States, that his father was not a citizen of the United States, that his father is not shown to have become a citizen of the United States, that the claimant owed no natural allegiance to the United States, and that he apparently chose to remain a subject of a foreign power after attaining his majority—it must be held that this application for naturalization was the first manifestation of an intent to become a citizen, and that it negatives the presumption of an earlier election.”

In the case of *In re Di Simone*, 108 Fed. 942, an Italian subject came to the United States, leaving a child in Italy with relatives. After taking out his first citizenship papers, the father sent for his child to join him. Upon arrival in the United States and examination by the immigration authorities it was found that she had trachoma, and an order for her deportation was issued. Application was made on her behalf to the circuit court for the district of Louisiana for a writ of habeas corpus, on the ground that she was illegally detained. In view of the fact that her father had made his declaration of intention, it was contended that the child, under the policy of our naturalization laws, was not an alien immigrant. The view was expressed that if the petitioner on coming here had found her father a naturalized citizen, she could not, under the policy of the law, have been treated as an alien immigrant so as to prohibit her from entering this country, however loathsome, dangerous or contagious a disease

her sore eyes might prove to be. The opinion was advanced that, under the policy of the naturalization laws, "alien residential citizens," though not naturalized, may possess an "inchoate status" of citizenship, which may vest such rights of citizenship in this petitioner on her arrival in the United States, as should forbid her deportation as an alien immigrant, even though she may be afflicted with a dangerous, contagious disease. The court said that the petitioner, although an alien, may not be "an alien immigrant" under the statute. The court stated that the facts involved "grave questions of both domestic and international law, which have not since the organization of the national courts been free therein from plaguing difficulties—that is, as to whether the petitioner, notwithstanding the 'inchoate status' of the father's citizenship, on her coming to this port, is an alien immigrant."

There was no evidence introduced by the immigration authorities in this case in support of their view that the petitioner was an alien immigrant or that she had a "loathsome or dangerous contagious disease." There were certain unverified papers pinned to the answer of the immigration authorities, called "annexes," but it was held that these were not competent as evidence in a court authorizing the deportation of the petitioner, and the court expressed the view that she should be set at liberty to join and live with her parents, who were "residential citizens" of New Orleans.

In *United States ex rel. Abdoo v. Williams*, 132 Fed. 894, the facts were that John Abdoo, a native Syrian, came to the United States and prior to July, 1904, took out his first papers. On July 31, 1904, his two children, aged 8 and 14, arrived at the port of New York. Upon examination it was found that they both had trachoma, and they were excluded from admission. On August 10, 1904, Abdoo took out his final papers and applied to

the immigration authorities for a rehearing, which was granted. The result of the hearing was to confirm the view reached as to the older child, but on the ground that it did not satisfactorily appear from the evidence that she was Abdoo's daughter. As to the younger daughter, although the board who passed upon the matter was satisfied that she had a contagious disease, a majority apparently supposed that her father's naturalization had changed her status, and voted to admit her. The third member of the board appealed to the Department of Commerce and Labor, and that Department held that both children were aliens and should be excluded.

The court held that the naturalization of the father did not change the status of the children. Said the court: "They were born out of the limits and jurisdiction of the United States, their father at the time of their respective births not being a citizen thereof; therefore, under R. S. 1993 they were born aliens. They were aliens when they arrived here on July 31, 1904. The effect of their father's naturalization has been carefully restricted by Congress. The relevant parts of R. S. 2172 are, 'the children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the time of naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof.' It has been repeatedly held that the mere being at Ellis Island in the custody of the immigration authorities is not a landing within the meaning of any provision of the Revised Statutes, and that no landing has been effected until the immigrant has been passed by the authorities at Ellis Island. *In re Palagano*, 38 Fed. 580; *Nishimura Ekiu v. United States*, 142 U. S. 651; *In re Gayde* (C. C.), 113 Fed. 588. Therefore these children were not 'dwelling in the United States' when their father was

naturalized, and his act did not require the authorities to consider them as citizens. Being aliens, and indisputably immigrants, the provisions of the exclusion acts apply, and it being properly determined that they are within one of the excluded classes, the respondent has jurisdiction to hold them for deportation. The relator relies on *In re Di Simone*, 108 Fed. 942. In that case the court held that a minor child 'coming to join her father and finding him a naturalized citizen, could not, under the policy of the law, have been treated as an alien immigrant, so as to prevent her from entering, however loathsome, contagious and dangerous a disease her sore eyes might have proven to be.' And it applied the same rule when the parent had only taken out first papers. Although the opinion cited is a careful and elaborate one, it is unpersuasive to the conclusion that plain, positive, and unambiguous provisions of statute should be disregarded, as they necessarily must be, to reach the result contended for. The subjects of naturalization and its results and of immigration and its restrictions rest wholly with Congress, and the policy of the law is what that branch of the government chooses to make it. If the law which it enacts works hardship, application should be made to amend it. Judicial legislation under the guise of a construction of unambiguous words is an imperfect remedy, and one which courts—certainly courts of first instance—should be slow to adopt. But in cases like the one at bar, there is no injustice in the legislation. Upon this subject Congress has expressly provided for just such a case as this. As to aliens generally, it is provided (Sec. 19, Act Mar. 3, 1903, 32 Stat. at L. 1218), that 'no alien suffering from a loathsome or with a dangerous contagious disease other than one of a quarantinable nature shall be permitted to land for medical treatment in the hospitals of the United States.' But in the 37th Section of the same act (32

Stat. 1221), is found this provision: 'Whenever an alien shall have taken up his permanent residence in this country and shall have filed his preliminary declaration to become a citizen and thereafter shall send for his wife or minor children to join him, if said wife or either of said children shall be found to be affected with any contagious disorder, and if it be proved that said disorder was contracted on board the ship in which they came, and is so certified by the examining surgeon at the port of arrival, such wife or children shall be held, under such regulations as the Secretary of the Treasury shall prescribe, until it shall be determined whether the disorder will be easily curable, or whether they can be permitted to land without danger to other persons; and they shall not be deported until such facts have been ascertained.' Congress has thus set the limits within which the rules excluding aliens shall be modified, in cases where the father avails of his opportunity to become a citizen; and since the children of the relator do not come within the proviso and are in fact aliens suffering from a contagious disease, they should be deported."

2. Petition for Naturalization.

a. In General.

The next step in the process of naturalization is the petition for naturalization.

The Act of June 29, 1906, provides that:

"Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of

the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided*, That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting." Sec. 4, par. 2.

b. Time of Filing.

If the applicant has resided in the United States for the statutory period, he may, when two years have elapsed after making formal declaration of intention to become a citizen, make and file his petition for naturalization. The petition must be filed not more than seven years after the applicant has made the declaration of intention. Sec. 4, par. 2.

Petitions for naturalization may be made and filed either during term time or vacation of the court, and shall be docketed the same day as filed.

c. To Whom Made.

The petition must be addressed to a court authorized to naturalize aliens, and in the judicial district in which the alien resides. Sec. 4, par. 1. See, also, *In re Clark*, 18 Barb. 444.

For the courts authorized to naturalize, see p. 11, *supra*, and Appendix, *post*, giving list of courts.

d. Form of Petition.

Prior to the passage of the Act of 1906, no form of petition was prescribed by law, but it was held by the courts that the petition must "allege the existence of all

facts and the fulfilment of all conditions upon the existence and fulfilment of which the statutes which confer the right asserted have made it dependent." In re Bodek, 63 Fed. Rep. 813; In re An Alien, 7 Hill, 137.

The Act of 1906, provides that the petition shall set forth "every fact material to his (the petitioner's) naturalization and required to be proved upon the final hearing of his application." Sec. 4, par. 2.

The Act of 1906, prescribes the following form of petition:

PETITION FOR NATURALIZATION.

.....Court of.....

In the matter of the petition of.....to be admitted as a citizen of the United States of America.

To the.....Court:

The petition of.....respectfully shows:

First. My full name is.....

Second. My place of residence is number.....street, city of....., State (Territory or District) of.....

Third. My occupation is.....

Fourth. I was born on the.....day of.....at.....

Fifth. I emigrated to the United States from....., on or about the.....day of....., anno Domini....., and arrived at the port of....., in the United States, on the vessel.....

Sixth. I declared my intention to become a citizen of the United States on the.....day of.....at....., in the.....court of.....

Seventh. I am.....married. My wife's name is..... She was born in.....and now resides at..... I have.....children, and the name, date, and place of birth and place of residence of each of said children is as follows:.....;;

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any

organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to....., of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since, anno Domini....., and in the State (Territory or District) of.....for one year at least next preceding the date of this petition, to wit, since.....day of....., anno Domini.....

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the.....court of.....at....., and the said petition was denied by the said court for the following reasons and causes, to wit, , and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Commerce and Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated.....

(Signature of petitioner).....

....., ss:

....., being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own

knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this.....day of....., anno Domini.....

[L. s.]

(Sec. 27.)

Clerk of the.....Court.

The petition must be made in duplicate. This is to enable the clerk to furnish one to the Bureau of Naturalization at Washington, the other to remain on file in the court.

(A) Description of Applicant.

The petition must contain a description of the applicant. It shall state "his full name, place of residence, occupation, date and place of birth, place from which he emigrated, date and place of arrival in the United States, and if entered through a port, the name of vessel in which he arrived; the time when, and place and name of court where he declared his intention to become a citizen; if married, name of wife, and country of her nativity and place of residence at time of filing petition; and if he has children, name, date, and place of birth and residence of each child living at time of filing petition."

(B) Allegations of Petition.

(a) Disbelief in Anarchy and Polygamy.

The petition shall state that the petitioner is not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government.

It shall also set forth that the petitioner is not a polygamist or believer in the practice of polygamy.

(b) Of Intention to Become a Citizen, to Renounce Allegiance, and to Reside Permanently in the United States.

The petition must state that it is the intention of the applicant to become a citizen of the United States, and

to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which at the time of filing the petition he may be a citizen or subject.

To prevent mistake in the name or title of the particular sovereign or state whose allegiance is to be renounced, a list of foreign countries and their rulers is furnished clerks of courts by the Bureau of Naturalization. See Appendix, post.

Revised lists are sent out from the Bureau from time to time.

The petition must also state that it is the intention of the petitioner to reside permanently in the United States.

(c) Of Previous Denial of Naturalization.

The petitioner shall also state whether he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed.

(d) As to Residence.

The petition must state that the applicant has resided continuously in the United States of America for a term of five years at least immediately preceding the date of his petition, and in the state, territory, or district for one year at least next preceding the date of the petition.

(e) As to Ability to Speak English.

The petition should state that the applicant is able to speak the English language. An exception is made, however, in the case of persons who have made their declaration of intention to become citizens required by law prior to September 27, 1906. Sec. 8.

Naturalization regulation of October 2, 1906:

“Aliens who make the declaration of intention required

by law prior to September 27, 1906, unless they can be naturalized before that date under the laws then in force, must comply with the requirements of the Act of June 29, 1906, in regard to the filing of petitions for naturalization and furnishing proof, except that they will not be required to speak the English language or to sign petitions in their own handwriting."

(C.) Signature of Petitioner.

The petition must be signed by the applicant. Sec. 4, par. 2.* And unless he filed his declaration of intention before the passage of the Act of 1906, it must be "in his own handwriting." The proviso to Section 4, paragraph 2, declares "that if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting."

(D.) Verification of Petition.

The petition must be "duly verified." Sec. 4, par. 2.

It should be subscribed and sworn to before the clerk of the court to which it is addressed. Sec. 27.

The petition shall also be verified by the affidavits of at least two credible witnesses. Sec. 4, par. 2.

(E.) Witnesses.

(i.) *Citizenship of.*

The witnesses must be "citizens of the United States." Sec. 4, par. 2.

(ii.) *Personal Acquaintance with Applicant.*

The witnesses shall state in their affidavits that they have personally known the applicant to be a resident of

*The signature must be written out without abbreviation. Nat. Reg., Oct. 2, 1906.

the United States for a period of at least five years continuously, and of the state, territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States. Sec. 4, par. 2.

(iii.) *Form of Affidavit.*

The following form of affidavit of witnesses is prescribed by the law: Sec. 27.

AFFIDAVIT OF WITNESSES.

.....Court of

In the matter of the petition of.....to be admitted
a citizen of the United States of America.

....., ss:

....., occupation, residing at,
and , occupation, residing at
each being severally, duly and respectively sworn, deposes
and says that he is a citizen of the United States of
America; that he has personally known, the
petitioner above mentioned, to be a resident of the
United States for a period of at least five years con-
tinuously immediately preceding the date of filing his
petition, and of the state (territory or district) in which
the above-entitled application is made for a period of
..... years immediately preceding the date of filing
his petition, and that he has personal knowledge that
the said petitioner is a person of good moral character,
attached to the principles of the Constitution of the

United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

Subscribed and sworn to before me this day of
, nineteen hundred and

[L. s.]

(Official character of attester).

(iv.) *Fees of.*

Upon the filing of his petition to become a citizen of the United States, the petitioner shall deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpœnaing and paying the legal fees of any witnesses for whom he may request a subpœna, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner. Sec. 13, par. 5.

e. Notice.

(A.) In General.

Immediately after filing the petition, the clerk shall give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpœna for the witnesses so named by the said applicant to appear upon

the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing, other witnesses may be summoned. Sec. 5, Act of June 29, 1906.

(B.) Form.

The form of notice prescribed by the Bureau of Naturalization is as follows:

NOTICE OF APPLICATION FOR ADMISSION TO CITIZENSHIP.

Petitions for Naturalization at the.....Term of.....
Court, to be held at.....

Name.	Place of Birth.	Residence.	Date of Arrival in U. S.	Place of Arrival.	Approximate Date of Final Hearing.	Witnesses.	
						Name.	Res.
.....

.....,
Clerk of the.....Court,

.....

**f. Certificate from Department of Commerce and Labor—
Declaration of Intention.**

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this Act. This certificate shall state the date, place, and manner of his arrival in the United States. Sec. 4, par. 2.

At the same time, the declaration of intention of the petitioner shall be filed with the clerk. Sec. 4, par. 2.

The certificate from the Department of Commerce and Labor and the declaration of intention shall be attached to and made a part of the petition. Sec. 4, par. 2.

3. Residence.

a. In General.

Before an alien can become naturalized under the general laws of the United States, he must have resided here at least five years.

Section 2170 of the Revised Statutes provides that "no alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States."

The language of the Act of June 29, 1906, is similar: "It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state or territory where such court is at the time held one year at least."

The reason for the requirement of such preliminary residence is obvious. It enables the applicant to become acquainted with the character of our institutions. It tests the sincerity of his desire for citizenship.

The law, justly regarding a change in his allegiance by a foreigner as an act of grave importance, wisely provides that there shall be two steps in the process. By the first, the purpose of change is announced. Between this and actual naturalization the lapse of a considerable interval is required, in order that the final step may be taken with due deliberation. Persons who may have declared their intention to become citizens often change their minds, and fail to carry that intention into effect. They have seen occasion to avail themselves of the *locus*

penitentiæ which the law allows. Sec'y Fish, For. Rel. 1871, 254.

b. Meaning of "Residence."

In its more restricted meaning the word residence denotes a person's habitual physical presence in a country or place. In its broad sense it means a place of abode, selected with the intention of remaining permanently or for an indefinite period. Van Dyne, *Citizenship of the United States*, 83.

In its legal acceptation residence is the place of a party's home or domicile. Every change of abode is not regarded as constituting a new residence, in the legal sense of the word, unless it is accompanied with the intention to abandon the former with the purpose of taking up another. Residence, in its legal acceptation, is the party's home or domicile, and not merely the spot occupied by him for the time being. *In re An Alien*, Fed. Cas. 201a.

In the case of *In re Hawley*, 1 Daly, 531, the court said: "There are few questions that come up for the consideration of judicial tribunals which it is more difficult to define than what will constitute a residence. The best definition that I have ever been able to find, or which my own experience could suggest—and I have had a great deal—is that to be deduced from the Roman law—that a man's residence is the place where his family dwells, or which he makes the chief seat of his affairs and interests."

c. "Continued Residence."*

The residence must be continuous. The language of Section 2170 is "continued term of five years." In the Act of 1906 it is "resided continuously . . . five years at least."

*See article by author on "Continued Residence of Applicant for Naturalization," 29 *American Law Review*, 52.

What is meant by continued residence? Can a foreigner after making the formal declaration of intention to become a citizen, leave the United States for any purpose, or for any period, without interrupting the continuity of his residence and forfeiting the benefits acquired thereby? Little light is thrown upon this inquiry by the decisions of our courts, and text writers seem to give the matter little attention.

Taken in the legal sense,* temporary absence from the United States, upon business or pleasure, would not be incompatible with continued residence here. The sole criterion would be the intention of the party. To determine this it would be proper to take into consideration the length of the absence, its purpose, and the circumstances surrounding the case. In a case arising under the treaty of 1868 (15 Stat. at L. 615) between the United States and the North German Confederation, the opinion was expressed by the Attorney General that the residence of an applicant for naturalization would not be interrupted by "a transient absence for business, pleasure, or other occasion, with the intention of returning." *Stern's Case*, 13 Ops. Atty. Gen. 376. On the other hand, one who, immediately after declaring his intention to become a citizen of the United States, removed to Mexico and there engaged in business, was deemed to have abandoned his declared intention to become an American citizen. 2 Wharton's Int. Law Digest, 360.

And in the case of a native Russian who declared his intention to become a citizen in 1893, and then returned to Russia where he still remained in 1896, Secretary Olney said his sojourn in Russia would doubtless be held by a naturalizing court to interrupt the continuous residence required by law as a condition precedent to his

*"The phrase 'continued term of five years' means residence in the general legal sense." Mr. Fish to Mr. Bancroft, Sept. 20, 1870, 3 Moore's Int. Law Digest, 354.

naturalization. Mr. Olney to Mr. Breckinridge, January 27, 1896, 3 Moore's Int. Law Digest, 356.

The logical and rational construction of the language of the law would admit a brief temporary absence from the United States during the period of probation without interruption of the continued residence required by the statute. A study of the history of our naturalization legislation, however, does not clearly show this to have been the intention of Congress. The earliest Federal law relative to the naturalization of aliens, the Act of March 26, 1790 (1 Stat. at L. 103, Chap. 3), provided that "any alien . . . who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof." By Act of January 29, 1795 (1 Stat. at L. 414, Chap. 20), a preliminary declaration of intention was provided for, and the applicant was required to declare "that he has resided within the United States five years at least." The act of June 18, 1798 (1 Stat. at L. 566, Chap. 54), required the applicant to prove "that he has resided within the United States fourteen years at least." This law was repealed by the Act of April 14, 1802 (2 Stat. at L. 153, Chap. 28, U. S. Comp. Stat. 1901, 1329), which made it the duty of the court admitting the applicant to satisfy itself "that he has resided within the United States five years at least." This Act also provided that the oath of the applicant should, in no case, be allowed to prove his residence.

In November, 1804, while the law of 1802 was in force, one Walton applied to the United States Circuit Court at Alexandria, Virginia, for naturalization. Affidavits were submitted showing that Walton had resided in the United States more than six years; that during that period he was absent a short time on business, but left his family in this country. The application was rejected by the court because the residence did not appear to be

a continued residence, and the term of absence was indefinite. *Ex parte Walton*, 1 Cranch, C. C. 186, Fed. Cas. No. 17,127.

In December, 1804, in the case of James Saunderson, who applied to the same court, an affidavit was presented showing that Saunderson came to the United States in October, 1797, and continued to reside here until 1800, when he went to England, returning in April, 1801. In the fall of 1801 he again went to England, and in 1802 returned to this country, where he continued to live to the date of his application. Although he had actually resided in the United States more than five years, the court refused to admit him because he had not continued to reside, according to the requirement of the law. *Ex parte Saunderson*, 1 Cranch C. C. 219, Fed. Cas. No. 12,378.

In the case of Hawley (*In re Hawley*, 1 Daly, 531), naturalization was refused because the applicant after residing in the United States ten years and declaring his intention to become a citizen went to his native country (Ireland) on account of his father's illness and remained there seven years. After returning to the United States and dwelling here more than a year longer, he made application for admission to citizenship, and the evidence showed that before leaving for Ireland he had expressed to his friends his intention to return and reside in the United States. The court in rejecting his application based its action largely upon the fact that while he was in Ireland he worked at his trade of mechanic. This, coupled with his long absence, in the opinion of the court, effected a change of residence.

Up to this time the law had not expressly required a continuous residence. It appears to have been the opinion of the court, however, in the cases just cited, that the law contemplated continuous physical presence in the country. This seems to be an extreme construction.

March 3, 1813, Congress passed "An Act for the regulation of seamen on board the public and private vessels of the United States" (2 Stat. at L. 809, chap. 42, U. S. Comp. Stat. 1901, 1333), the 12th section of which provided that "no person who shall arrive in the United States from and after the time when this act shall take effect shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, as aforesaid, have resided within the United States, without being at any time during the said five years out of the territory of the United States."

In *Ex parte Paul*, 7 Hill, 56, the facts were that Paul, a native of Ireland, came to the United States in 1836. In 1843 he left the city of Rochester, N. Y., to go to Ogdensburg by way of Lake Ontario. The steamboat in which he traveled stopped about ten minutes at Kingston, Canada, to take in passengers, during which time Paul stepped upon the dock where he remained two or three minutes and then returned to the boat and proceeded to Ogdensburg. In 1844 he applied for naturalization, having resided in the United States since 1836. The court denied his application. Referring to the language of the statute, the court said:

"The leading object of the provision was undoubtedly to make the alien's right depend upon the simple enquiry whether he has in fact *remained* within the United States during the whole five years next preceding his application, and thus exclude all enquiry as to the intention and purpose of his departure. In the present case the applicant has not complied with the condition upon which his right to become a citizen depends, and his application must, therefore, be rejected."

While it is not unreasonable to suppose that this law was intended to apply to seamen alone, its terms embraced all aliens, and precluded even momentary absence

from the territory of the United States, for any purpose whatever, without the forfeiture of the benefits acquired by previous residence. This remained the law until the year 1848. In 1846 an effort was made to repeal the last clause of the 12th section, and a bill was introduced in the Senate to accomplish that purpose. It was referred to the judiciary committee, and a favorable report was submitted thereon by Senator Breese. The bill did not become a law at that time, but the following extract from the report referred to is of interest as showing the sentiment of the committee: "The hardship complained of by this law as it now reads is that persons other than seamen, for whose regulation and naturalization, alone, the law may well be supposed to have been enacted, have, by the courts of the country, adhering to the letter of the law, been deprived of certificates of citizenship, who had made their declaration of intention to become citizens of the United States in conformity with the general naturalization law, whose residence, business pursuits, and property are wholly within the United States; it being shown on final examination that after five years had commenced to run, and during their progress, they had been temporarily out of the territory and beyond the jurisdiction of the United States, sometimes with their own consent, in pursuit of their business, at other times accidentally, in the course of voyages upon the northern lakes, where a divided jurisdiction obtains, the line and limit of which is imaginary only. Cases are stated of persons engaged in large commercial operations, who, with their families, permanently reside in some of our large cities, after making their declarations of their bona fide intention to become citizens, are compelled to visit foreign countries for purposes connected with their business, but immediately returning to their homes in the United States, who are unable, by reason of this temporary absence, to show upon the final examination

that they have been continually during the five years within our territory, and are thus refused their certificates of naturalization. . . . All such persons could conscientiously depose that they have, at no time within the five years, been out of the territory of the United States with the intention of remaining out; that the *animus revertendi* always continued. The committee think that the rigor of the law, if originally intended to apply to such persons, and not to seamen only, might with propriety be relaxed, leaving it to the courts to determine upon each application for a certificate of naturalization, if the residence set up has been bona fide with the intention of remaining, only interrupted by such and kindred circumstances to which the committee have referred. To accomplish this, enough of the section will remain after the clause in question is repealed; for a momentary absence, to be judged of by all the circumstances attending it, may not be found inconsistent with a correct legal idea of a continued residence as required."

Two years later the matter again came up in Congress, and June 26, 1848, an act (9 Stat. at L. 240, chap. 72) was passed striking from the law the clause in question, *viz.*, "without being at any time during the said five years out of the territory of the United States." The natural inference from this action of Congress would seem to be that it intended to relieve the applicant for naturalization from the forfeiture caused by necessary temporary absence, unaccompanied by change of intention.* But a perusal of the record of the debate in Congress at the time of the repeal of the clause does not fully confirm this view. Mr. Dickinson, having the bill in charge in the Senate, stated its object to be "to enable those individuals who had not been able to perfect their letters of naturalization, in consequence of being compelled to be absent from the United States since the notification of

* See *In re Clark*, 18 Barb. 444.

their intention, to obtain relief." Cong. Globe, 1st Session, 30th Congress, 854.

"Mr. Underwood asked whether the bill proposed that the time an individual might be absent from the United States was to be made up by subsequent residence, prior to the granting of the certificate. Mr. Dickinson replied in the affirmative. Mr. Breese said that if the applicant for naturalization should be called out of the United States, and remain abroad four years and eleven months, that time would not be counted. Mr. Berrien explained the law as it would stand after the passage of the bill, which required that the five years' residence should be completed. If the applicant for a certificate were absent any part of that time, it would remain for the court to decide whether that absence was sufficient to prevent the issuing of the certificate. As the law now stands if any person after notifying his intention to become a citizen, sets his foot out of the United States, he must go through the full term of five years' residence again. Under this bill he may be called away for a short period by business, but having filed his desire to become naturalized, the court may decide that there is no sufficient reason for his going again over the whole term of probation. The bill was then considered and read a third time and passed." Id.

In the House, Mr. Birdsall, in explaining the object of the bill, stated that persons who had left the United States as volunteers for Mexico, after declaring their intention to become naturalized, had been thus prevented from obtaining the residence required by law. "Mr. McClernand said that those who had enlisted in the service of their country, and had been sent beyond its limits in the prosecution of the war, fell within the wording of the present law, and were forced to lose all the time they

were thus absent, though they had previously notified their intention of being naturalized. The bill was then passed." Id. 864.

So far as it can be gathered from the foregoing, the intention of Congress in repealing the clause in question seems to have been to conserve to the applicant for naturalization, who, in good faith, temporarily absents himself from the United States after declaring his intention, only the benefit of the time which he has actually spent in this country.

But it is not believed that this apparent intention would justify the courts in disregarding what seems to be the plain and reasonable meaning of the language of the law. The great injustice of such a construction is well shown by the statement of Mr. McClernand, quoted above, that persons who had volunteered in the service of the United States, and been sent beyond its limits in prosecution of war against a foreign nation, would be "forced to lose all the time they were thus absent, though they had previously notified their intention of being naturalized."

Moreover, if the residence is interrupted by temporary absence, without change of intention on the part of the applicant, the logical consequence would be that he should be required, not merely to make up the time thus lost, but to begin *de novo*. For a residence which is once broken can not be said to be a continued residence, such as the law requires.

The just rule, it is apprehended, is that suggested by Senator Berrien, *supra*: "If the applicant is absent any part of the time, it remains for the court to decide whether that absence is sufficient to prevent the issuing of the certificate." In other words, if the facts and circumstances of the absence, as shown in the particular case, indicate no change of intention on the part of the

applicant, it is the duty of the court to issue the certificate, without requiring such time to be made up. If there is evidence showing abandonment of intention, the application should be refused, and the party should be required to begin *de novo*. This is believed to be the only construction consistent with the spirit of the law and with the plain import of the language employed.

It is interesting, in this connection, to note the construction given very similar language used in naturalization treaties. Our treaties of naturalization with Bavaria (15 Stat. at L. 661), and Württemberg (16 Stat. at L. 735), concluded in 1868, require that citizens of the one country shall have "resided uninterruptedly" within the territory of the other for five years. This language is certainly as strong as "continued residence" in our naturalization law. Rev. Stat., Sec. 2170 (U. S. Comp. Stat. 1901, 1333). Yet in the protocol of each of these treaties, more exactly defining and explaining the contents of the treaties, it is declared: "The words 'resided uninterruptedly' are obviously to be understood, not of a continued bodily presence, but in the legal sense, and therefore a transient absence, a journey, or the like, by no means interrupts the period of five years contemplated by the 1st article." 15 Stat. at L. 664. See, also, For. Rel. 1901, 520.

Section 15 of the Act of June 29, 1906, declares that "if any alien who shall have secured a certificate of citizenship under the provisions of this Act shall within five years after the issuance of such certificate return to the country of his nativity or go to any other foreign country, and take permanent residence therein, it shall be considered *prima facie* evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and in the absence of countervailing evidence it shall be sufficient in the proper proceeding to

authorize the cancellation of his certificate of citizenship as fraudulent."

d. Constructive Residence.

(A.) Merchant Seamen.

Alien seamen, while serving on board a merchant vessel of the United States, are deemed to be constructively within the United States.

In the case of *In re Scott*, 1 Daly, 534, the applicant came to the United States at the age of three years, and lived in New York until he reached the age of seventeen, when he shipped as a seaman on board an American vessel and was continuously employed as a sailor on American merchant vessels for seven years and until he applied for naturalization. The court expressed the opinion that the residence of a seaman, if married, is the place where his family dwells; if unmarried, it is the place where his domicile was fixed when he first went to sea as a mariner, and that his service as a mariner exclusively in American vessels did not operate as an abandonment of his domicile. The conclusion of the court was, that the applicant had resided within the United States during the five years preceding his application, and admitted him to citizenship. See *In re Shaw*, 2 Pa. Dist. Ct. 250.

(B.) In Countries in Which the United States has Extra-Territorial Rights.

In the case of *Gargiulo*, a dragoman of the American Legation at Constantinople, who had made his declaration of intention in the United States and afterwards returned to his official duties in Turkey, Secretary Gresham held that the five years' residence required by the statutes means *actual residence*, and that a person can not be considered "as having been constructively in this country during the past five years merely because he has

been in the employment of this government" as interpreter or dragoman of the American Legation in Turkey during that time. The fiction of extraterritoriality can not be carried to that extent. Mr. Gresham to Mr. Terrell, Nov. 2, 1893, 3 Moore's Int. Law Digest, 353.

A constructive residence is held not to answer the requirement of the statute. Proposed residence in Japan can not, therefore, be made available for naturalization purposes. Mr. Evarts to Mr. de la Camp, July 25, 1877, 3 Moore's Int. Law Digest, 353.

The process of naturalization must be performed in the United States. Mr. Frelinghuysen to Mr. Kasson, Jan. 15, 1885, For. Rel. 1885, 394.

e. Residence within State.

In addition to residence within the United States for the continued term of five years, the applicant must have resided within the state or territory where the court is at the time held, one year at least. Sec. 4, par. 4.

In *Chandler v. Wartman*, 6 N. J. L. J. 301, it was held that R. S. 2165, providing that the court naturalizing an alien must be satisfied that he has resided in the United States for five years and within the state where the court is held for one year, did not require the last year of residence to be in the state where the application is made, but that it was sufficient that applicant had lived for any one year in that state.

And, in *Cummings' Petition*, 41 N. H. 270, arising under the same statute, the court declared that: "In an application for naturalization under the Act of April 14, 1802, it is not necessary for the applicant to allege or prove his residence for the year immediately preceding his application in the state or territory where the court is holden; but it is sufficient for him to allege and prove such residence for any one of the five years of his residence in the United States."

The existing law, the Act of June 29, 1906 (Sec. 10), provides: "That in case the petitioner has not resided in the state, territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the state, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside."

f. In the Philippines and Porto Rico.

Residence in the Philippine Islands or Porto Rico, is deemed "residence within the United States" within the meaning of the naturalization law. The Act of June 29, 1906, provides that "residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law." (Sec. 30.)

g. In Hawaii.

The Act of April 30, 1900, 31. Stat. 161, dispensed with the previous declaration of intention in the case of persons applying to be naturalized in Hawaii, who had resided there at least five years prior to June 14, 1900. The language of the Act (Sec. 100) is: "For the purposes of naturalization under the laws of the United States, residence in the Hawaiian Islands prior to the taking effect of this Act shall be deemed equivalent to residence in the United States and in the Territory of Hawaii;

and the requirement of a previous declaration of intention to become a citizen of the United States and to renounce former allegiance shall not apply to persons who have resided in said islands at least five years prior to the taking effect of this Act, but all other provisions of the laws of the United States relating to naturalization shall, so far as applicable, apply to persons in the said islands."

h. Proof of Residence.

(A.) Under Act of 1906.

The statute (Act of June 29, 1906, Sec. 4, par. 4) provides that "it shall be made to appear to the satisfaction of the court" that the alien has resided, etc.

(B) Under Prior Laws.

Before the passage of the Act of 1906, Rev. Stat. 2165, provided that "the oath of the applicant shall in no case be allowed to prove his residence." And it was held that this not merely rendered the oath of the applicant insufficient, but that it amounted to a prohibition against taking his oath as proof of his residence, and that such oath if taken was extra-judicial.

The statute did not prescribe how the residence was to be proved, but the usual method was for the courts to require testimony under oath of at least two citizens of good standing who were able to testify of their own knowledge that the applicant had been a resident of the United States for five years at least, and within the state or territory wherein the court was held for one year.*

*In *re An Alien*, 7 Hill, 137, it was held that in proceedings for naturalization an alien's residence could not be established by affidavit, but must be proved in court by the testimony of witnesses.

In *Com. v. Paper*, 1 Brewster (Pa.), 263, it was held that an alien could not vouch for a person petitioning for naturalization.

The law requires that some of the essential facts shall be made to

The Act of 1906, which repeals Section 2165 R. S. expressly provides:

"In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence . . . shall be required, and the name, place of residence and occupation of each witness shall be set forth in the record." Sec. 4, par. 4.

i. Exceptions.

There are several exceptions by special provision of law to the requirement as to residence.

(A.) Army.

Soldiers in the Army of the United States who have enlisted and are honorably discharged, may be admitted as citizens of the United States after one year's residence within the United States previous to the application. The law reads:

Rev. St., Sec. 2166 (U. S. Comp. Stat., 1901, 1331):

"Any alien of the age of 21 years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he *shall not be required to prove more than one year's residence within*

appear to the satisfaction of the court by evidence other than the testimony of the applicant himself, and, to meet this requirement, a witness is usually produced, commonly called a "voucher." In the case of *Re Lipshitz*, 97 Fed. 584, where it appeared that the "voucher" presenting himself had been in the habit of appearing in the same capacity in such cases, and of making a charge for appearing and giving his testimony, the court held that an applicant for naturalization should produce a voucher other than one who habitually, and for compensation, appears as such. See, also, *People v. Sweetman*, 3 Park. C. R. 358.

the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States."

"Armies" does not cover enlistments in the Navy. In *re Bailey*, 2 Sawyer C. C. 200; In *re Chamavas*, 21 N. Y. S. 104.

(B.) Navy and Marine Corps.

Aliens enlisting in the Navy or Marine Corps of the United States, and serving five consecutive years in the Navy, or one enlistment in the Marine Corps, after honorable discharge, may be admitted as citizens without other proof of residence. The law, Act of July 26, 1894, 28 Stat. at L. 124, Chap. 165, reads: "Any alien of the age of 21 years and upward, who has enlisted or may enlist in the United States Navy or Marine Corps, and has served, or may hereafter serve, five consecutive years in the United States Navy, or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition without any previous declaration of his intention to become such."

Mere service as a soldier, or residence in the country in that capacity, does not make one a citizen, however. *People ex rel. Orman v. Riley*, 15 Cal. 48.

The soldier, sailor or marine must personally petition the court and be formally admitted to citizenship. *Van Dyne*, *Citizenship of the United States*, 96.

(C.) Merchant Seamen.

While serving on board a merchant vessel of the United States, a seaman is deemed to be constructively within the United States.

As has been stated heretofore (*supra*), under Sec. 2174, Rev. Stat. (U. S. Comp. Stat. 1901, 1334), a seaman being a foreigner, after declaring his intention of becoming a citizen, and serving three years on board of a merchant vessel of the United States, may be admitted to citizenship. He is required to make application to a competent court, and to produce a certificate of his declaration of intention, and his certificate of discharge and good conduct during his service on such vessel.

For the purpose of manning and serving on board any merchant vessel of the United States, he is to be deemed a citizen of the United States after making his declaration of intention, and after he shall have served such three years; and for all purposes of protection as an American citizen, he shall be deemed such after filing his declaration of intention.

4. Qualifications as to Age, Education, and Moral Character.

(a.) Age.

While there is no express declaration of the law to that effect, no person can become naturalized under the general statutes of the United States who has not attained the age of twenty-one years.

Until the Act of June 29, 1906, went into effect, an alien minor was not competent to declare his intention to become a citizen of the United States, but Section 4, paragraph 1, of that Act provides that an alien shall make his declaration of intention "after he has reached the age of eighteen years."

Section 2166 of the Revised Statutes, providing for the naturalization of soldiers of the Army of the United States, expressly limits the benefits of the law to aliens "of the age of twenty-one years and upward."

And the Act of July 26, 1894, relating to the naturalization of men of the Navy or Marine Corps of the United States, contains a like limitation.

(b.) Education.

(A.) Act of June 29, 1906.

Under the existing law, Act June 29, 1906, ability to speak English and to write is one of the qualifications of an applicant for naturalization. The language of the law is "that no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language." Sec. 8.

And the law, in providing for the making and filing of a petition for naturalization requires the applicant to make such petition in writing "signed by the applicant in his own handwriting." Sec. 4, par. 2.

This section contains a proviso, however, dispensing with the requirement that the petitioner shall sign the petition in his own handwriting in cases where the applicant has filed his declaration of intention before the passage of the Act of June 29, 1906, the provision reading: "Provided that if he has filed his declaration before the passage of this Act, he shall not be required to sign the petition in his own handwriting." Sec. 4, par. 2.

(B.) Exceptions.

There are also three exceptions to the provision of the law declaring that no alien who can not speak English shall be naturalized:

(i) Where the alien is physically unable to comply with the requirement.*

*If an alien is physically unable to speak, that fact should be stated in his petition for naturalization in lieu of the statement, "I am able to speak the English language." Nat. Reg., Oct. 2, 1906.

(ii) Where the alien has before the passage of the Act of June 29, 1906, declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration.*

(iii) In the case of aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands. Sec. 8.

The text of the proviso is: "*Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands." Sec. 8, Act June 29, 1906.

(C.) Under Prior Law.

Under the provisions of Section 2165 of the Revised Statutes repealed by the Act of June 29, 1906, there was no requirement that the applicant should be able to read or write. The law provided, however, that it should appear to the satisfaction of the naturalizing court that the applicant was "attached to the principles of

*Aliens who have made declarations of intention prior to September 27, 1906, under the provisions of law in force at the time of making such declarations, can not be required, as a preliminary to filing their petitions for naturalization, to file new declarations of intention under the Act of June 29, 1906; nor are such aliens required, as a condition precedent to naturalization, to speak the English language. Id.

the Constitution of the United States;" and required him to declare on oath that he would support the Constitution.

In the case of *Re Kanaka Nian*, 6 Utah, 259, which arose under the provisions of Section 2165 of the Revised Statutes, it was held that one who could not read or write English but had read the Constitution in a foreign language, and knew that the United States had a President but could not mention his name, did not understand the principles of the Government of the United States or its institutions sufficiently to become a citizen. See, also, *In re Bodek*, 63 Fed. 813; *Rushworth v. Judges*, 58 N. J. L. 97; *In re Conway*, 9 Misc. 652; *In re Lab's Petition*, 3 Pa. Dist. R. 728; 5 Id. 597; 18 Pa. Co. Ct. 270.

But in the case of *Re Rodriguez*, 81 Fed. 337, it was held that an alien who was ignorant and unable to read and write and who could not explain the principles of the Constitution was entitled to be naturalized, it appearing that he was peaceable, industrious, of a good moral character, and law abiding. See, also, *Ex parte Johnson*, 79 Miss. 637.

c. Moral Character.

(A.) In General.

The law (Act of June 29, 1906) provides that "it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that he has resided continuously within the United States five years at least . . . and that, during that time, he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." Sec. 4, par. 4.

Our law contemplates the naturalization of aliens of good moral character only. As was well stated in the case of *In re Clark*, 18 Barb. 444:

"It was never intended by those who enacted the act for

the naturalization of aliens that persons who had been transported for crime—that those who came over here merely because Europe was too full for them—but who retained their loyalty of feeling for the monarchies they had left, should, because they remained here for the period of five years, be entitled to admission to citizenship. The intention was to permit those who came here from abroad seeking a permanent home, who, by five years of continuous residence, manifested that intention, and by good behavior during all that time and an attachment to republican principles—a good behavior and an attachment to republican principles, which could be proved to the satisfaction of a court—had shown themselves worthy recipients of the benefits to be derived from citizenship, and safe depositories of the powers it confers, to be admitted to these rights and the exercise of these powers, by an order entered in open court after an examination into the facts of each case—and a judicial decision upon the application—an examination which should be conducted with the same care, and a decision which should be made with the same deliberation and solemnity as that which should accompany every other judicial act.”

(B.) What Acts are Immoral.

As to what acts are immoral within the meaning of the law, it was held in the case of *Re Spenser*, 5 Sawyer, 195, which arose when Section 2165 of the Revised Statutes was in force containing identically the same language on the subject as the existing law, that an alien who has been guilty of murder, robbery, theft, bribery, or perjury is barred from admission to citizenship.

An alien who lives in a state of polygamy or believes that polygamy may be rightfully practiced in defiance to the laws of the country to the contrary is not entitled to citizenship. *Ex parte Douglass*, and *Ex parte Sandburg*, 5 West. Jur. 171.

It has also been held that habitual gaming or selling of liquors, when forbidden by statute, would be a bar to admission. *Re Spenser*, supra. The court said that:

"Upon general principles it would seem that whatever is forbidden by the law of the land ought to be considered for the time being immoral within the purview of this statute. And it may be said with good reason that a person who violates the law thereby manifests, in a greater or less degree, that he is not 'well disposed to the good order and happiness' of the country. Good behavior—that behavior for which a person reasonably suspected of an intention to misbehave may be required to give surety—is defined to be conduct authorized by law, and bad behavior such as the law punishes."

In this case the applicant had been convicted of perjury before making his application, but had been pardoned. It was contended that the pardon wiped out the offense and that he was eligible to naturalization just as if the offense had never been committed. But the court declared that, while the pardon operated to purge the offender of his guilt and that thenceforth he was an innocent man, it did not obliterate the past, nor the fact that he had committed the crime wiped out. The effect of the decision was that an alien convicted of perjury while residing here though pardoned is not "of good moral character," entitled to admission to citizenship; and that an alien who has behaved as a man of good moral character during the five years immediately preceding his application, but who had not so behaved during his residence in the United States prior thereto is not entitled to admission.

(C.) Anarchists; Polygamists.

Section 7 of the Act of June 29, 1906, provides:

"That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teach-

ing such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States."

While the law in force prior to the date of the passage of the Act of 1906, contains no express provision in relation to anarchists, in *Ex parte Sauer*, 81 Fed. 355, where the applicant declared himself to be a socialist and a believer in the doctrines of socialism, the court decided that he was not entitled to become a citizen of the United States. In the course of the opinion the court said:

"Thereupon I stated that, in the judgment of the court, the principles of socialism are directly at war with and antagonistical to the principles of the Constitution of the United States of America and absolutely inconsistent with his being 'well disposed to the good order and happiness' of the people and government of this country. I then asked him to state some of its leading principles. He replied that they contemplated the ownership and operation of all railroads and transportation lines of the country by the Government, and that, as land was as free as air and water, socialists demanded the forced sale of all lands owned by the citizens in excess of that which was actually necessary to make a living upon (estimated by him at 200 acres) to the government for the purpose of giving it to those who owned none. I sought to point out to him how such ideas were un-American, impracticable, and dangerous in the extreme to society as organized throughout the civilized world, and particularly in this free country. I furthermore explained to him that private property could not, under the Constitution, be taken by the government for private use, and that

this was a fundamental principle of the government, and one of the most sacred and jealously guarded rights of the citizen. He repelled these suggestions with derision and scorn, maintaining his right to his views. I informed him that while it was true that he or any naturalized citizen had an indisputable right to such sentiments and to their free utterance, as well as to any other views they might entertain upon government, yet when a foreigner openly confesses to have such opinions, and, declaring his intentions to promulgate and carry them out, seeks to be admitted to American citizenship, it would be contrary to his oath of naturalization and violative of the spirit and principles on which this government is founded and depends for its welfare to admit him to citizenship.

"For these reasons, and because I am of opinion that the time is upon us when the safety and perpetuity of our free institutions and of constitutional government in the land, as well as the good order and happiness of the people, demand that those who apply for the privilege, honor, and distinction of becoming American citizens should be free from doctrines which are not only subversive of constitutional government and our free institutions, but of organized society itself, have I deemed it wise and meet to deny the application of Richard V. Sauer, while he harbors such views, to become a citizen of the United States of America."

(D.) Proof of Moral Character.

The good moral character of the applicant is to be proved (1) by the oath of the applicant; (2) by the testimony of at least two witnesses, citizens of the United States.

Section 4, paragraph 2, of the Act of June 29, 1906, providing for the verification of the applicant's petition for naturalization by the affidavits of at least two credible witnesses, citizens of the United States, who shall

state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years, and of the state, territory, or district for a period of at least one year, provides also that they shall state in their affidavits "that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified in their opinion to be admitted as a citizen of the United States."

And paragraph 4 of the same section, providing that "it shall be made to appear to the satisfaction of the court" that the applicant for naturalization has behaved as a man of good moral character during his residence in the United States and the state, territory, or district for the period prescribed by the statute, also provides that "in addition to the oath of the applicant the testimony of at least two witnesses, citizens of the United States, as to the facts of . . . moral character and attachment to the principles of the Constitution, shall be required;" and the name, place of residence, and occupation of each witness shall be set forth in the record.

To recapitulate: The applicant is required to verify his petition for naturalization by the affidavits of at least two witnesses, stating that they each have personal knowledge that he is a person of good moral character; and at the final hearing the petitioner is examined under oath, and, in addition, the testimony of at least two witnesses is required as to his moral character.

The law (Sec. 9) provides that upon the final hearing "the applicant and his witnesses shall be examined under oath before the court and in the presence of the court."

5. Final Hearing.

a. Time of.

Final action on petitions for naturalization shall be had only on stated days, to be fixed by rule of the court. In no case shall final action be had upon a petition until

at least ninety days have elapsed after filing and posting of notice of such petition. Sec. 6, Act of June 29, 1906.

The Act further provides that "no person shall be naturalized, nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. Id.

b. Place.

Every final hearing upon petition for naturalization shall be had in open court before a judge or judges thereof. Sec. 9.

c. Procedure.

(A.) Appearance and Examination of Applicant and Witnesses.

Upon the day fixed for final hearing the applicant and his witnesses shall appear before the court and be examined under oath in the presence of the court. Sec. 9. The language of the law is "upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court."

In case the witnesses which the applicant when filing his petition for naturalization has named to be summoned in his behalf at the final hearing can not be produced upon the final hearing, other witnesses may be summoned. Sec. 5.

(B.) Appearance of United States.

The United States shall have the right to appear before any court exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or affecting his right to admission to citizenship, and shall have the

right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings. Sec. 11.

(C.) Proof of Residence and Behavior as Man of Good Moral Character.

The law provides that certain facts "shall be made to appear to the satisfaction of the court," viz: (1) That, immediately preceding the date of his application, the alien has resided continuously within the United States five years at least, and within the state or territory where the court is held one year. (2) That he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, well disposed to the good order and happiness of the same.

These matters are to be proved (1) by the oath of the applicant, (2) by the testimony of at least two witnesses, citizens of the United States. Sec. 4, par. 4.

(D.) Renunciation of Foreign Allegiance.

(i.) In General.

The applicant is also required, before he is admitted to citizenship, to "declare on oath in open court that he . . . absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject." Sec. 4, par. 3.

To preclude errors in the name or title of the sovereign or state whose allegiance is renounced, the Bureau of Naturalization furnishes clerks of courts with a list of foreign countries and their rulers. See Appendix.

In *Ex parte Smith*, 8 Blackf. 395, where, in the oath of

renunciation, the sovereign was not specified by name, the omission was held not to be fatal.

(ii.) **Filipinos and Porto Ricans.**

Under the judicial interpretation of the law in force prior to the Act of June 29, 1906 (*Gonzales v. Williams*, 192 U. S. 1), citizens of the Philippine Islands and Porto Rico were debarred from citizenship of the United States, as they were not aliens, and the naturalization laws of the United States only applied to aliens. To remedy this situation the Act of June 29, 1906 (Sec. 30), provides:

"That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law."

As citizens of the Philippines and Porto Rico owe allegiance to the United States, they are not required to renounce former allegiance.

(E.) **Renunciation of Title or Order of Nobility.**

In case the alien has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he is required to make an express renunciation of his title or order of nobility in the

court to which his application is made, and his renunciation shall be recorded in the court. Sec. 4, par. 5.

(F.) Oath of Allegiance to the United States.

Before the applicant is admitted to citizenship "he shall declare on oath in open court that he will support the Constitution of the United States, . . . and that he will support and defend the Constitution and laws of the United States against all enemies, foreign, and domestic, and bear true faith and allegiance to the same." Sec. 4, par. 3.

The applicant for admission to citizenship must be acquainted with the provisions of the Federal Constitution and in sympathy with its principles, otherwise he can not intelligently and truthfully declare that he will support it. *Evans' American Citizenship*, 27.

Where it appears, upon examination, that an applicant for naturalization is without such knowledge of the Constitution as is essential to the rational assumption of an undertaking avouched by oath to support it, his oath to support the Constitution should not be accepted, nor should the court admit an alien to citizenship without being satisfied that he has at least some general comprehension of what the Constitution is, and of the principles which it affirms. *Re Bodek*, 63 Fed. 813.

One who can not read or write English, but has read the Constitution in a foreign language, and knows that the United States has a President, but can not mention his name, does not understand the principles of the Government of the United States or its institutions sufficiently to become a citizen. *Re Kanaka Nian*, 6 Utah, 259, 4 L. R. A. 726, 21 Pac. 993.

But in the case of *Re Rodriguez*, 81 Fed. 337, the United States Circuit Court held that an alien who was ignorant and unable to read and write, and who could

not explain the principles of the Constitution, was entitled to be naturalized, where it was shown that he was peaceable, industrious, of a good moral character, and law-abiding.

(G.) Change of Name.

At the time and as a part of the naturalization of any alien it shall be lawful for the court in its discretion upon the petition of such alien to make a decree changing his name, and his certificate of naturalization shall be issued to him in accordance therewith. Sec. 6.*

Prior to the passage of the law of 1906, it was held in *In re Nigri*, 32 Misc. 392, 66 N. Y. S. 182, that a person who obtains a legal change of name was not entitled to have his certificate or record of naturalization changed accordingly.

Where the name is misstated in the certificate the true name may be proved by parol. *Behrensmeyer v. Kreitz*, 135 Ill. 591.

Every final order which may be made upon the petition for naturalization shall be under the hand of the court and entered in full upon a record kept for that purpose.

6. Certificate.

(a.) In General.

Prior to the enactment of the Law of June 29, 1906, no form of naturalization certificate was prescribed by law and there was great variety in the certificates issued. Some were long with a full recital. Others were short, with a bare statement that the holder was admitted to

* In every case in which the name of a naturalized alien is changed by order of court, as provided in Section 6, the clerks of courts are required to report to the Bureau of Immigration and Naturalization, when transmitting to it the duplicate of the certificate of naturalization of the alien whose name is changed, both the original and the new name of the said person. Nat. Reg. of Oct. 2, 1906.

citizenship on a certain day. The certificates contained no description of the person naturalized, and were, in consequence, readily transferable. They were printed from type on ordinary paper, and it was easy to manufacture spurious certificates.

(b.) Certificates Under the Act of March 3, 1903.

The Act of March 3, 1903, 32 Stat. at L. 1222, in its 39th section, known as the "anarchist clause," provided that in order to render a naturalization certificate valid the naturalizing court should cause to be entered of record the affidavit of the applicant and his witnesses, so far as applicable, reciting and affirming a compliance with the terms of that act and previous acts relating to naturalization, and that each final order and certificate thereafter made should show on the face thereof that the affidavits required of the applicant and his witnesses were duly made and recorded.

Many courts, through ignorance of the provisions of the Act, or for other reason, issued invalid certificates of naturalization. Thousands of such invalid certificates were issued—and many were issued to persons entitled to receive valid certificates. To remedy this injustice, on the same day the Act of June 29, 1906, establishing a Bureau of Immigration and Naturalization, and providing for a uniform rule for the naturalization of aliens, was passed, *which repealed Section 39 of the Act of March 3, 1903*, the following law was passed:

"Naturalization certificates issued after the Act approved March third, nineteen hundred and three, entitled 'An Act to regulate the immigration of aliens into the United States,' went into effect, which fail to show that the courts issuing said certificates complied with the requirements of section thirty-nine of said Act, but which were otherwise lawfully issued, are hereby declared to be

as valid as though said certificates complied with said section: *Provided*, That in all such cases applications shall be made for new naturalization certificates, and when the same are granted, upon compliance with the provisions of said Act of nineteen hundred and three, they shall relate back to the defective certificates, and citizenship shall be deemed to have been perfected at the date of the defective certificate.

"Section 2. That all the records relating to naturalization, all declarations of intention to become citizens of the United States, and all certificates of naturalization filed, recorded, or issued prior to the time when this Act takes effect in or from the criminal court of Cook County, Illinois, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this Act further validated or legalized." Act of June 29, 1906.

(c.) Under the Act of June 29, 1906.

The Act of 1906, makes it the duty of the Secretary of Commerce and Labor to cause to be engraved on distinctive paper blank certificates of citizenship (Sec. 17), to be furnished clerks of courts having jurisdiction in naturalization matters. Sec. 12, par. 3. All blank certificates are consecutively numbered, and clerks are required to account for them to the Bureau of Naturalization.

(d.) Form.

The Act prescribes the form of certificates as follows:

CERTIFICATE OF NATURALIZATION.

Number.....

Petition, volume....., page.....

Stub, volume....., page.....

(Signature of holder).....

Description of holder: Age.....; height.....; color.....; complexion.....; color of eyes.....; color of hair.....; visible distinguishing marks..... Name, age, and place of residence of wife.....,, Names, ages, and places of residence of minor children.....,,;,,;,
, ss:

Be it remembered, that at a.....term of the..... court of....., held at..... on the..... day of....., in the year of our Lord nineteen hundred and,, who previous to his (her) naturalization was a citizen or subject of, at present residing at number..... street..... city (town)..... state (territory or district), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that ..he was entitled to be so admitted, it was thereupon ordered by the said court that ..he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the.....day of....., in the year of our Lord nineteen hundred and....., and of our independence the

[L. s.]

.....,
 (Official character of attestor.)

It will be noticed that the certificate includes a personal description of the holder, and he is required to sign his name on the face of the certificate. This precludes false personation.

The prescribed form is brief and simple, as well as comprehensive. It attests that the person therein named and described, having made application pursuant to law, and the court having found that he had complied in all respects with the law in relation to naturalization and was entitled to be naturalized, it was ordered by the court that he be admitted as a citizen.

The seal of the court is affixed to the certificate.

Each certificate of naturalization shall bear upon its face in a place prepared therefor the volume number and page number of the petition whereon such certificate was issued, and the volume number and the stub number of such certificate. Sec. 14.

(e.) Duplicate of Certificate.

It is made the duty of the clerk of every court exercising jurisdiction in naturalization matters under the Act of 1906 to send to the Bureau of Naturalization at Washington within thirty days after the issuance of a certificate of citizenship a duplicate of such certificate. Sec. 12.

(f.) Stub.

The Act also requires the clerk to make and keep on file in his office a stub for each certificate issued by him whereon shall be entered a memorandum of all the essential facts set forth in such certificate. Sec. 12.

The prescribed form of the stub of certificate is as follows:

STUB OF CERTIFICATE OF NATURALIZATION.

No. of certificate,

Name,; age,

Declaration of intention, volume, page

Petition, volume, page

Name, age, and place of residence of wife,
, Names, ages, and places of residence of
 minor children,,,;,,
,,,,,,,,
,,,

Date of order, volume, page,

(Signature of holder)

(g.) Blank Certificates.

Section 12 of the Act provides that:

“Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Immigration and Naturalization and shall account for the same to the said Bureau whenever required so to do by such Bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said Bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said Bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.”

(h.) Proof of Naturalization.

(i.) The Record.

The judicial record, or a certified copy thereof, is the usual evidence of naturalization. Naturalization can be proved by parol only when the record has been lost or destroyed. *Green v. Salas*, 31 Fed. 106. In this case the court said that it found nowhere a departure from the

rule that "the record must be produced or accounted for."

This rule applies to a woman who alleges citizenship through the naturalization of her husband. *Belcher v. Farren*, 26 Pac. 791.

The mere certificate of the clerk of the court, stating that the applicant had been naturalized, is not competent proof. *Green v. Salas*, *supra*.

A passport issued by the Department of State is not competent judicial proof of citizenship. *In re Gee Hop*, 71 Fed. 274.

Where the name of a person is misstated in a certificate of naturalization, the true name may be proved by parol. *Behrensmeyer v. Kreitz*, 135 Ill. 591.

It was held in *In re McCoppin*, 5 Sawyer, 630, that an inaccurate statement of facts in the recital of a judgment of naturalization did not impair the judgment where it appeared that the conditions of law had been fulfilled. See, also, *In re Coleman*, 15 Blatch. 406.

In *Boyd v. Thayer*, 143 U. S. 135, the United States Supreme Court held that "where no record of naturalization can be produced, evidence that a person having the requisite qualifications to become a citizen did in fact and for a long time vote and hold office and exercise rights belonging to citizens, is sufficient to warrant a jury in inferring that he had been duly naturalized as a citizen."

In the absence of a record, a jury may be allowed to infer that a person having the requisite qualifications to become a citizen had been fully naturalized. *Contzen v. United States*, 179 U. S. 191.

Evidence that a man had lived in the United States for forty years, that he had voted for twenty-five years, and that a person of his name had been naturalized, is sufficient to show that he was a naturalized citizen. *Ryan vs. Egan*, 156 Ill., 224.

Where it appeared that an alien was residing in South Carolina on July 4, 1776; that he fought as a Whig officer during the Revolution; that he acquired and sold real estate; that he was always reputed as a citizen, and that his children born in France while he and his wife were there had always claimed to be American citizens, it was held that he and his children were citizens of the United States. *Sasportas v. De La Motta*, 10 Rich. Eq. 38; *People v. McNally*, 59 How. Pr. 500.

Where an alien came to the United States in 1865 and lived here until his death in 1899, having participated in state and national elections, and held at his death a liquor tax certificate which could be issued lawfully only to a citizen, it was held that this was sufficient to show that he had been in fact naturalized and was a citizen at his death. *Fay v. Taylor*, 63 N. Y. S. 572, 31 Misc. Rep. 32.

Where it is alleged that a record of naturalization has been lost or destroyed, the Department of State leaves it to the courts to hear the evidence of such loss and remedy it. Secretary Bayard, Feb. 2, 1887, 3 Moore's Int. Law Digest, 498.

The proper course for a person seeking to establish his naturalization by other than ordinary proofs is to resort to the judicial branch of the government, which is charged with the duty of naturalizing aliens, and which is invested with appropriate powers for investigating and determining matters of fact which are essential to the decision of the question of acquired citizenship. Secretary Blaine, May 9, 1889, 3 Moore's Int. Law Digest, 498.

Record evidence of naturalization of the fathers (of the applicants for protection) is, of course, the best evidence but it is not the only evidence. If it can be proved "by the testimony of witnesses who know the fact that their fathers were naturalized, such evidence will be received

and considered." Secretary Olney, April 14, 1896; 3 Moore's Int. Law Digest, 499.

The record may be amended *nunc pro tunc*. In re Christern, 11 Jones & S. 523.

It has been held that the record of the declaration of intention may be amended to include omissions even after a proceeding to impeach the record has been begun. *State v. McDonald*, 24 Minn. 48.

The record can not be amended, however, where it does not show that the necessary proceedings were taken under the naturalization law. *Matter of Desty*, 8 Abb. (N. Y.), N. Cas. 250; *Green v. Salas*, 31 Fed. 106.

In *Gagnon v. United States*, 193 U. S. 451, where a judgment of naturalization was entered by way of amendment of the record *nunc pro tunc* thirty-three years after judgment was alleged to have been rendered, there being no entry or memorandum of any kind of the alleged original decree, it was held that the order was invalid, the power to amend not involving the power to create.

(ii.) Where Records Have Been Lost or Destroyed.

Where a record has been lost or destroyed, or where it can not be produced owing to lapse of time or death of the person naturalized, secondary evidence is admissible to prove naturalization. *Strickley v. Hill*, 22 Utah, 257; *People v. McNally*, 59 How. Pr. 500; *Hogan v. Kurtz*, 94 U. S. 773; *Kreitz v. Behrensmeyer*, 125 Ill. 141.

Applications for the issuance of declarations of intention, or certificates of naturalization, in lieu of declarations of intention or certificates of naturalization claimed to have been lost or destroyed, shall be made under oath to the clerk of the court by which any such declarations of intention or certificates of naturalization were originally issued, and shall contain full information in regard to the lost or destroyed papers, and as to the time, place,

and circumstances of such alleged loss or destruction. The clerk shall forward to the Bureau of Immigration and Naturalization the above-mentioned applications, together with such information as he may have bearing upon the merits thereof, for investigation, and no such paper so applied for shall be issued until the Bureau of Immigration and Naturalization (Division of Naturalization) reports the results of its investigation as to the merits of the application. Nat. Reg. of Oct. 2, 1906.

In every case in which the clerk of a court issues, in accordance with the preceding rule, a declaration of intention (Form 2203) or a certificate of naturalization (Form 2207), upon proof of the loss or destruction of the original, he shall make an entry on the original declaration, or on the stub of the original certificate of naturalization, as the case may require, showing the issuance of a new paper and the number thereof, and shall immediately thereafter forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the duplicate of any such paper so issued. Nat. Reg. of Oct. 2, 1906.

(iii.) Certificate of Naturalization.

Some courts have held that a certificate of naturalization is legal evidence of the naturalization of a person. *Vaux v. Nesbit*, 1 McCord Ch. 352; *People v. Pease*, 30 Barb. 588; *Brown v. Shilling*, 9 Md. 74.

Other courts have held that the certificate in particular cases was insufficient evidence of naturalization. See *Miller v. Reinhart*, 18 Ga. 239, and cases cited.

In *Green v. Salas*, 31 Fed. 106, it was held that a mere certificate of the clerk of the court, stating that the applicant had been naturalized, is not competent proof, and can not be aided by parol evidence.

Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept

under any of the provisions of the Act of June 29, 1906, shall be admitted in evidence equally with the originals in any proceedings under the Act and in all cases in which the originals thereof might be admissible as evidence. Sec. 28.

The statements of diplomatic and consular officers of the United States, duly certified, required by Section 15, paragraph 2, of the Act, to be furnished from time to time to the Department of Justice, through the Department of State, in relation to aliens who shall have secured certificates of citizenship under the provisions of that Act, and who shall within five years after the issuance of such certificates, return to the country of their nativity, and take permanent residence therein, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

i. Naturalization Not Retroactive.

The decree of naturalization does not operate retroactively. *Ex parte Kyle*, 67 Fed. 306; *Dryden v. Swinburne*, 20 W. Va. 89; *State v. Boyd*, 48 N. W. 739. See 3 Moore's Int. Law Digest, 423 et seq.

I. Impeachment of Naturalization.

1. Before Municipal Courts.

A decree of naturalization can not be impeached collaterally. *Spratt v. Spratt*, 4 Pet. 392; *Campbell v. Gordon*, 6 Cranch, 175.

A judgment of naturalization rendered by a competent court is conclusive as between the person naturalized and private individuals.*

* A private individual has no standing in court to institute a proceeding to set aside an order admitting an alien to citizenship. *Re McCarran*, 8 Misc. 482, 23 L. R. A. 835; *United States v. Norsch*, 42 Fed. 417; *United States v. Gleason*, 73 Fed. 396; *Pintsch Compressing Company v. Bergin*, 84 Fed. 140. In the latter case the court said: "The record thus

a. Under Act of 1906.

It is not conclusive upon the United States, however. The existing law (Act of June 29, 1906) specifically provides for the appearance of the United States in opposition to the admission of an applicant to naturalization (Sec. 11) and for the institution of proceedings by the United States district attorney for setting aside or canceling the certificate of citizenship on the ground of fraud or that it was illegally procured. Sec. 15.

Reports of Fraudulent Naturalization.

The second paragraph of Section 15 of the Act provides for the cooperation of American diplomatic and

ordered on the application of the respondent evidenced a solemn judicial judgment that she was entitled to receive and did thereby receive from the United States the franchise of citizenship. Is anyone entitled to proceed for its rescission unless the United States themselves, or by their authorization? No precedent, no text writer, and no rule of law is cited which justifies us in answering this question affirmatively. The fundamental principle that, in the absence of a statute of authorization, only the United States can proceed judicially to recall or rescind franchises granted by them, has peculiar force with reference to citizenship, as to which so great a variety of interests, political and individual of high importance is concerned, that the jurisdiction of inquiry should be especially fixed and limited."

In *Scott v. Strobach*, 49 Ala. 477, it was held that a certificate of naturalization valid on its face could not be impeached collaterally on the ground of fraud and false recitals; and it has been held that naturalization proceedings can not be impeached for a false oath which is extrajudicial. *United States v. Grottkau*, 30 Fed. 672.

Naturalization has been impeached where defects in the naturalization proceedings were shown on the face of the record (*Banks v. Walker*, 3 Barb. Ch. 438); and for improper vouching (*Commonwealth v. Paper*, 1 Brewster, 263).

In *re Yamashita* (Wash.), 59 L. R. A. 671, however, where a Japanese was denied admission as an attorney at law (although he had a certificate of naturalization) on the ground that he was not a citizen of the United States, the court held that the judgment admitting him to citizenship could be collaterally attacked because it showed on its face that Yamashita was of the Japanese race and not entitled to citizenship.

Certificates of naturalization granted to Chinese against the prohibition of the Act of 1882 have been treated as void. In *re Gee Hop*, 71 Fed. 274; In *re Hong Yen Chang*, 84 Cal. 163; 21 Ops. Atty. Gen. 581.

consular officers in the detection and prosecution of naturalization frauds. The provisions of this paragraph have been called to their attention by a circular instruction from the Department of State, dated April 19, 1907, which reads as follows:

"To the Diplomatic and Consular Officers of the United States.

"GENTLEMEN: Under the provisions of the executive order of April 6, 1907, the following paragraph is added to the diplomatic instructions and consular regulations after paragraph 170:

"'Reports of Fraudulent Naturalization.—When any alien who has secured naturalization of the United States shall proceed abroad within five years after his naturalization and shall take up his permanent residence in any foreign country within five years after the date of his naturalization, it shall be deemed prima facie evidence that he did not intend in good faith to become a citizen of the United States when he applied for naturalization, and in the absence of countervailing evidence it shall be sufficient in the proper proceedings to authorize the cancellation of his certificate of citizenship as fraudulent. Diplomatic and consular officers shall furnish the Department of State, to be transmitted to the Department of Justice, the names of those within their jurisdictions, respectively, who are subject to the provisions of this requirement, and such statements from diplomatic and consular officers shall be certified to by such officers under their official seals, and are under the law admissible in evidence in all courts to cancel certificates of naturalization.' Act of June 29, 1906, Sec. 15.

"The text of the law upon which this paragraph is based is appended to this instruction.*

"You are instructed, accordingly, that whenever a

* For the text of the Act of June 29, 1906, see Appendix, Laws of the United States, relating to Naturalization and Expatriation.

naturalized citizen goes abroad and takes up a permanent residence in a foreign country within five years after his naturalization, it may be assumed that his naturalization was not obtained in good faith, and upon certification by a diplomatic or consular officer of the fact of the foreign residence proceedings may be taken through the Department of Justice to set aside the naturalization on the ground that it was obtained in contravention of the naturalization laws.

“Diplomatic and consular officers making such certification, must, therefore, state:

“First, that the person is a permanent resident in a foreign country; and

“Second, that the permanent residence was taken up within five years after naturalization was conferred, and must certify not only to the facts but to their means of knowledge.

“No specified form of certification is prescribed, as the circumstances surrounding each case vary materially. It is not necessary that the residence shall have been acquired during the incumbency of the certifying officer, but he may, if he is in possession of sufficient evidence, certify to a residence which was acquired prior to his having had opportunity to have personal knowledge on the subject.

“Certifications under this instruction should be sent forthwith to this Department, together with the certificate of naturalization of the person in interest; and, pending instructions from the Department, such person's citizenship shall be considered as awaiting adjudication, and he may be refused a passport or registration as a citizen of the United States. In the event of actual interposition being required in his behalf with the authorities of a foreign country, the facts should, if possible, be telegraphed to the Department and its instructions awaited, and the foreign authorities should be requested

to suspend any proceedings against the person in interest until instructions from this Government shall have been received.

"When a certification under this instruction is made by a consul he should, at the same time that he sends the certification to this Department, notify the embassy or legation in the country in which his consulate is situated.

"I am, gentlemen, your obedient servant,

ELIHU ROOT."

Affidavit.

Before any United States attorney is authorized to institute proceedings for the cancellation of a naturalization certificate, he must be furnished with a proper affidavit on which the proceedings may be based. The Attorney General to the Secretary of Commerce and Labor, March 26, 1907. This has been held to be necessary in view of the text of paragraph one, Section 15 of the law, which provides for the institution of such proceedings "upon affidavit showing good cause therefor." It is held to apply with equal force in cases where the information is furnished by diplomatic or consular officers. In such cases the officer of the Department of State whose duty it is to examine and make proper disposition of the reports concerning fraudulent naturalizations received from the diplomatic and consular officers has been designated as the proper person to make the affidavit. This officer is the chief of the Passport Bureau. The affidavit states that "the papers hereto appended are the genuine documents received by" the Department of State, "and they are forwarded to the Department of Commerce and Labor to be used in proceedings to set aside as unlawfully obtained the naturalization of" X. Y.

b. Under Prior Laws.

But before the passage of the law of 1906, it was held that the United States could sue for the cancellation of

a decree of naturalization where it had been fraudulently obtained. *United States v. Norsch*, 42 Fed. 417.

In *Pintsch Compressing Co. v. Bergin*, 84 Fed. 140, where a woman had been admitted to citizenship, and there was no irregularity or defect apparent on the face of the record, while the court refused the petition of a private party to cancel the decree at a subsequent term on the ground that for the greater part of the two years immediately preceding her admission she had been under the disability of marriage, and held that this proposition involved mixed questions of law and fact, which were presumably passed on by the court before it admitted her to citizenship, the view was expressed that only the United States, or some person acting by their authorization, can institute proceedings to set aside a judgment of naturalization.

In *United States v. Kornmehl*, 89 Fed. 10, where it was made to appear to the court that the court issuing a naturalization certificate had been deceived by material false statements of the applicant as to his age and length of residence in this country, the court directed that the letters of naturalization be revoked as having been improvidently issued. The proceedings in this case were instituted by the immigration commissioners, in behalf of the United States.

See, also, 3 Moore's Int. Law Digest, 500.

But, in *United States v. Gleason*, 78 Fed. 396, the court declined to cancel the certificate upon the ground that it had been obtained by false representations. In referring to the case of *U. S. v. Norsch*, the court said: "Thayer, J., in *U. S. v. Norsch*, 42 Fed. 417, . . . seems to treat the liability of a judgment of naturalization to be set aside for fraud, like a patent, as conceded, and to have considered only the power of the courts of the United States to set aside such judgments of state courts and to intimate that the relief would be accomplished

by setting aside the certificate or by injunction against exercising the right. Such would seem to be the only modes of relief, if any could be granted, for, technically, no court not authorized by law to review a judgment could directly set it aside. *Barrow v. Hunton*, 99 U. S. 80, 25 L. ed. 407. And a court of equity can affect a judgment only by decree to prevent carrying it out or enforcing it. 2 Story Eq. Sec. 885. The surrender of the certificate, which is only evidence of the judgment, would not affect the citizenship established by the judgment; and an injunction which could only run against further exercise of the rights of citizenship would not affect past acts."

The court said that an attempt to carry out such a decree against the defendant would produce great confusion and mischief. "The defendant became," said the court, "a citizen of the State of New York, as well as of the United States. Other citizens became entitled to vote for him for such offices as citizens could hold, as well as he became entitled to vote, hold office, hold lands, or do what else citizens can do. Neither the state, nor any citizen of New York or of the United States, is a party to this suit; nor do they hold their right to vote for him or to have him hold office, under him, and no decree against him here could affect their right."

Upon the question whether a judgment of naturalization is conclusive upon a *state*, there has not been entire unanimity of opinion. The Act of 1906 contains no provision relating to the matter. In *Commonwealth v. Paper*, 1 Brewster, 263, while the court ordered the setting aside of certain certificates of naturalization, it was stated that this was done on the condition that the Attorney-General of the state should appear in the case. The court said: "One citizen can not impugn the action of a court in naturalization cases so far as to require the

cancellation of naturalization papers. Some public authority must do this; and I understood when this petition was handed up that the Attorney-General was to be the official party to the proceeding."

In re Shaw, 2 Pa. Dist. C. 250, is to the same effect. See, also, Re McCarran, 8 Misc. 482, and 16 App. Div. 311.

On the other hand, it was held in *Peterson v. State*, 89 S. W. 81, that a state can not impeach naturalization proceedings.

2. International Practice.

a. Executive Department of Government.

(A.) Power to Treat Certificate as Invalid.

The Department of State possesses no power to vacate decrees of naturalization; but it exercises, under the direction of the President, plenary jurisdiction over the conduct of foreign relations. In the exercise of this jurisdiction, the Department, as has often been held, will, so far as any action of its own is concerned, treat as invalid a certificate of naturalization that has been improperly obtained. John Bassett Moore, 3 Moore's Int. Law Digest, 501.

Secretary Hay in an instruction to the American Minister to Ecuador, June 21, 1902, said: "As you are aware, the Department's regulations require every naturalized citizen when he applies for a passport to make a sworn statement concerning his own or his parents' immigration, residence, and naturalization; and whenever the naturalization appears to have been improperly or improvidently granted it is not recognized under the Department's rules. For. Rel. 1902, 389. See also, Moore's Int. Law Digest, 501 et seq.

Recitations in the record of matters of fact are binding only upon parties to the proceedings and their privies. The Government of the United States was no party and stands in privity with no party to these pro-

ceedings of naturalization. And it is not in the power of Mr. Stern by erroneous recitations in *ex parte* proceedings to conclude the government as to matters of fact. Case of Moses Stern, 13 Op. Atty. Gen. 376.

(B.) Right of Foreign Governments to Impeach American Certificate of Naturalization Denied.

While the Department of State declines to recognize the validity of a certificate of naturalization when it appears that it was obtained by fraud or granted by mistake, this government denies the right of a foreign government to impeach a certificate of naturalization issued by an American court. American Passport, 156.

It has been uniformly held by the Department of State that while, on the application of a foreign government, it will cause inquiries to be made as to whether a judgment of naturalization was improvidently granted, and while it will never permit itself to grant protection based upon a naturalization decree which is shown to it to be fraudulent, it will not recognize a foreign government's right to impeach such decrees. When set up by it as a basis of its action towards a foreign state, it can not recognize the right of any foreign executive or court to determine as to their validity. That determination must be made, so far as concerns foreign governments, exclusively by itself. Mr. Bayard to Mr. McLane, February 15, 1888, For. Rel. 1888, pt. 1, 511. See 3 Moore's Int. Law Digest, 513, et seq.

b. International Claims Commissions.

(A.) In General.

It has been repeatedly held by international claims commissions that certificates of naturalization may be impeached in proceedings before such tribunals.

(B.) Spanish Claims Commission of 1871.

In a communication relating to the United States and Spanish Claims Commission of 1871, Secretary Evarts

said that that Commission was "an independent judicial tribunal possessed of all the powers and endowed with all the properties which should distinguish a court of high international jurisdiction, alike competent in the jurisdiction conferred upon it to bring under judgment the decisions of the local courts of both nations and beyond the competence of either government to interfere with, direct, or obstruct its deliberations." 3 Moore's International Arbitrations, 2599.

(C.) Costa Rican Claims Commission of 1860.

The umpire, Bertinatti, in Medina's case, before the United States and Costa Rican Commission of 1860, said:

"An act of naturalization, be it made by a judge *ex parte* in the exercise of his *voluntaria jurisdictio*, or be it the result of a decree of a king bearing an administrative character; in either case its value, on the point of evidence before an international commission, can only be that of an element of proof, subject to be examined according to the principle *locus regit actum*, both intrinsically and extrinsically, in order to be admitted or rejected according to the general principles in such a matter. . . .

"The certificates exhibited by them (the claimants) being made in due form, have for themselves the presumption of truth; but when it becomes evident that the statements therein contained are incorrect, the presumption of truth must yield to truth itself." 3 Moore's Arbitrations, 2587.

(D.) Venezuelan Claims Commission of 1903.

In the Flutie cases, which came before the United States and Venezuelan Claims Commission of 1903, Mr. Bainbridge, commissioner for the United States, in delivering the opinion of the Commission—an opinion remarkable for its clearness and comprehensiveness, giving

as it does an exhaustive résumé of judicial decisions, rulings of the executive, and adjudications of international tribunals—said:

“Whatever may be the conclusive force of judgments of naturalization under the municipal laws of the country in which they are granted, international tribunals, such as this Commission, have claimed and exercised the right to determine for themselves the citizenship of claimants from all the facts presented.”

In this case the Commission were convinced that the claimant “had not resided” in the United States for the continued term of five years nor for any considerable portion thereof prior to the date on which a naturalization certificate was granted to him; that the facts necessary to give the court jurisdiction did not exist, and therefore that the certificate of naturalization was improperly granted. The claim was dismissed. Ralston’s Report, 38. See, also, numerous cases in which international claims commissions have declined to recognize judgments of naturalization as conclusive, in 3 Moore’s International Arbitrations, 2583 to 2655.

(E.) Spanish Treaty Claims Commission (1905).

In the case of *Rita L. Ruiz et al. v. The United States*, which came before the Spanish Treaty Claims Commission, established pursuant to the treaty of 1898 between the United States and Spain, under the Act of March 3, 1901,* the defendant, in its answer to the peti-

* The 7th Article of the Treaty reads as follows:

“The United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war. The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article.”

It is provided in the first section of the organic Act that it shall be

tion of the plaintiffs, who claimed as the widow and children of Ricardo Ruiz, asserted that the naturalization of said Ricardo Ruiz, if obtained at all, was procured by false and fraudulent representations as to residence in the United States immediately preceding his application, and by the procuring of an affidavit to the same effect from a witness called by him, and that the claimants ought not to maintain their action.

The claimants demurred to the answer on the ground that the certificate of naturalization which defendant sought to impeach was a judgment of a court having competent jurisdiction and not subject to impeachment or review by the Commission.

Upon the demurrer oral arguments were made and briefs were filed, not only by counsel on both sides but by numerous attorneys for other claimants before the Commission.

As preliminary to the question of the conclusiveness of the certificate of naturalization, counsel discussed at great length the question as to whether the Commission was a municipal court or an international tribunal, and it was urged that the Commission was a court of the United States and not an international tribunal, and therefore that it must give full faith and credit to the judgments of all other courts, state or Federal, and must impute absolute verity and conclusiveness to a certificate of naturalization.

In passing on the preliminary question, the Commission said: "In a strictly technical sense the Commission is a national court, but in a broader sense is also international. In a very unique sense it is intimately related to both.

the duty of the Commission and that "it shall have jurisdiction to receive, examine and adjudicate all claims of citizens of the United States against Spain which the United States agreed to adjudicate and settle by the 7th Article of the Treaty," . . . and that the Commission "shall adjudicate said claims according to the merits of the several cases, the principles of equity, and of international law."

If not distinctly incorporated into the Federal judiciary system, it will not be denied that the organic Act (March 3, 1901) and the amendatory Act (June 30, 1902) confer upon the Commission all the powers of a Federal court necessary to the investigation and *adjudication* of the claims arising under the treaty of December 10, 1898. Being the creature of an Act of Congress, it is necessarily domestic in origin, and, being constituted exclusively of individuals of one nationality, it is certainly not international in composition, and its decisions affect only the government of its creation and composition. Back of the Act of Congress which gave it life, however, we find its conception in a treaty between two nations, and thus it came into being as a domestic creature stamped with the features of internationality.

"After a close study of the act and giving to its words the broad interpretation which the generous motive behind them authorizes, we find it impossible to separate the domestic character of the Commission as derived through its origin and composition from the international character imposed upon it by the treaty, and the precise words of the Act of Congress requiring the adjudication of claims "according to the principles of international law." Other domestic tribunals, such as prize courts, for illustration, administer international law in the absence of statutory mandate, because the nature of their business requires them to apply the law of nations; but this Commission is differentiated from all other municipal courts in that it is a domestic judicial tribunal definitely required, by the statute of its creation, to administer international law wherever that law may be fairly applied. The language of the statute, 'it shall adjudicate said claims *according to* the merits of the several cases, the principles of equity, and of *international law*,' is a mandate to the Commission to apply the principles of international law in a spirit of equity to the merits of

the cases whenever there are any such principles applicable. The exact status of the Commission, therefore, in jurisprudence, whether domestic or international, is by no means so important a question as the one of its powers. What can it do, rather than what we may call it, is the question of vital interest and consequence.

"If, by the act of its creation, admittedly domestic, it is required to do the very things for which international tribunals are established, it must be assumed that the Commission, as an equity tribunal, will endeavor to apply the principles of international law to the several cases as they arise. Relief can not be expected, therefore, in a case that is without merits—the first essential stipulation of the statute—and a case can not be meritorious that is dishonest or founded upon fraud. A case may, however, develop merits and yet this tribunal can not rightly adjudicate the same, in the light of the treaty and the Act of Congress, if it falls within the principles of international law, without applying them just as a mixed tribunal should do.

"Congress in its wisdom apprehended and unquestionably appreciated the difficulties in the way of adjudicating the various classes of claims by a tribunal restricted in its operation to the settled rules of law, and consequently decided to clothe it with greater power and more discretion than are properly exercised by the ordinary courts of law. It was not alone because the Government had solemnly assumed, but because it desired to pay all the valid claims of its citizens against Spain, that Congress created a tribunal with equitable powers so elastic that no complexity of facts or circumstances could or should prevent it from rendering such an award as the merits of the claim, the principles of justice and of international law require. The purpose of Congress in enacting this beneficial statute could not be better expressed

than in the impressive words of Chief Justice Waite in *Freylinghuysen v. Key* (110 U. S. 63):

“‘No technical rules of pleading, as applied in municipal courts, ought ever to be allowed to stand in the way of the national power to do what is right under all circumstances.’

“Finally, on the question as to the character of this Commission, the argument that it is only a domestic tribunal limited in some unexplained way in its powers as compared with an international tribunal, because, under certain conditions, the Supreme Court can review a case pending before it, is not a conclusive proposition. It will hardly be denied that the district courts of the United States are domestic tribunals, and yet Mr. Justice Story, in the case of the *Adeline* (9 Cranch, 244), speaking of district courts sitting as courts of prize, said:

“‘In the prize courts, in an especial manner, the allegations, the briefs, and the proceedings are in general modeled upon the civil law, with such additions and alterations as the practice of nations and the rights of belligerents and neutrals inevitably impose. A court of prize is emphatically a court of nations, and it takes neither its character nor its rules from the mere municipal regulations of any country.’

“It is no answer to say that this was spoken with reference to a prize court, because a district court of the United States, when sitting in prize cases, is no less domestic in its creation and composition than when sitting in bankruptcy, and appeals lie to the Supreme Court from a court of prize, which Justice Story says is ‘emphatically a court of nations,’ under precisely the same conditions as from a court of bankruptcy. Here we see the Supreme Court calling a purely municipal court a ‘*court of nations*.’

“While we have never gone so far as to call this Commission a ‘court of nations,’ it is quite clear that we might do so, with the sanction of the Supreme Court, without in any wise affecting its municipal character. We have rather been inclined to adopt the view of the Court of Claims, as so well expressed by Judge Weldon in the case of *The Ship Rose v. The United States* (36 Ct. Cl. R. 290, 302). That was a case arising under the Act of Congress of January 20, 1885, giving the Court of Claims jurisdiction to ascertain the claims of American citizens for spoliations committed by the French prior to the 31st of July, 1801, wherein it was provided that ‘they (the Court of Claims) shall decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same.’ The able jurist in that case said: ‘This court in making the investigation contemplated by the act of our jurisdiction *is sitting in the character of an international tribunal.*’

“Now, the act of this Commission’s jurisdiction provides that ‘it shall adjudicate said claims (those provided for by the treaty) according to the merits of the several cases, the principles of equity and of international law,’ and the claims all arise out of alleged injury to the persons and property of people claiming American citizenship, by Spanish authorities and subjects, contrary to their rights under international law. This Commission, therefore, while in every essential a municipal judicial body, in making the investigations and adjudications ‘contemplated by the act of our jurisdiction is sitting in the character of an international tribunal.’ . . .

“It is the opinion of the Commission that the court which issued the naturalization certificate to Ruiz is one of competent jurisdiction; that its decision upon facts ‘made to appear to the satisfaction of the court’ is conclusive that it exercised the jurisdiction conferred upon

it by the statute, and its conclusion entered upon the record, whether we call it an order, decision, or judgment, is entitled to the same degree of faith and credit generally accorded to the judgments of courts exercising undisputed jurisdiction. But it remains to be considered whether such an order or judgment is conclusive upon and precludes inquiry into the facts which were *made* to appear to the satisfaction of the court rendering it, by another forum of competent jurisdiction to hear and determine a cause in a proceeding wherein that judgment is pleaded as a basis for equitable relief, and the defense interposed is that the court was deceived by false and fraudulent representations knowingly and intentionally made by claimant to grant the certificate of naturalization.

"In considering their conclusiveness upon this court we will treat certificates of naturalization as judgments entitled to have such faith and credit given to them as by law or usage they have in the courts of the state where rendered, subject to the principles of international law, as applied by courts charged (as this one) with the administration of the law of nations.

"Counsel for claimants contend broadly that a judgment of naturalization is a judgment *in rem*, and for that reason is conclusive upon all the world as to the facts and things adjudged. Therefore, they argue, it is immaterial whether or not the judgment of naturalization is, as to Spain (in whose shoes the United States now stands), a foreign judgment, and that whether domestic or foreign it is equally conclusive in this tribunal, irrespective of the question as to whether it is administering municipal or international law. Admitting, however, that even a judgment *in rem* is not under all circumstances conclusive and may be collaterally attacked, not only for want of jurisdiction in the court that rendered it, but for some kinds of fraud, it is urged by claimants

that the fraud alleged in the case at bar is not of the kind that would render the judgment subject to a collateral attack, because the fraud charged is not extrinsic.

"Counsel for defendant deny that a certificate of naturalization is a judgment *in rem*, contending that at best it is only *quasi in rem*, but insist that in either aspect the proceedings which 'made it appear to the satisfaction of the court' may be inquired into in a subsequent action based upon that judgment when it is alleged that it was procured by fraud.

"Why counsel should distinguish a judgment of naturalization from a judgment *in rem*, and call it a judgment *quasi in rem*, does not clearly appear, for it is not pointed out in what respects the legal consequences of the one differ from the other. Being like a judgment *in rem*, similar attributes and consequences necessarily follow.

"Where fraud, in its procurement, is the defense against the conclusiveness of a judgment, we fail to discover any difference between a judgment *in personam* and a judgment *in rem*. The same is true if want of jurisdiction is the defense. These, however, are the only defenses that can be made to judgments *in rem*, since they are conclusive in all other respects upon all the world. But judgments *in personam*, being conclusive only as to parties and their privies, may be attacked by strangers upon any ground that would have been a valid defense in the original action.

"The only difference, therefore, between the two classes of judgments when pleaded in a subsequent action is that the sources of impeachment are materially less restricted in the case of an *in personam* judgment than when the judgment is *in rem*. The one, however, enjoys no greater immunity than the other when founded in fraud. Law can not be 'the perfection of human wisdom' if one may so debase its instrumentalities as to

make it the servant of his fraudulent designs and thereby secure for himself rights and privileges which would otherwise be denied him. The law that would make falsehood incontestable and fraud impregnable is not the law that makes and protects American citizenship.

“In the administration of the laws of Congress the courts are called upon to perform few more important functions than the conversion of an alien into American citizenship, and it is not easy to conceive how they could be more ignobly employed than in conferring this boon upon men who intentionally and criminally induce their favorable action through false and fraudulent representations. Shall an alien who thus abuses the jurisdiction of one of our courts in *ex parte* proceedings be permitted, unchallenged, to make the judgment of naturalization, obtained through fraud and perjury, the basis of a suit for damages against the country of his nativity, and for that purpose to invoke the assistance of another judicial tribunal of the country upon which he committed the fraud? It is difficult to see how there can be but one answer to the question.

“Admitting all that counsel have said and all the books say on the subject of estoppel by a former judgment, and even that ‘the doctrine of estoppels in judgments, instead of being odious, is one of the most conservative and salutary doctrines of the law’ (Freeman on Judgments, sec. 247; *Gray v. Pingry*, 17 Vt., 419, 44 Am. Dec. 345), we can not be unmindful of the principle, underlying and safeguarding all judicial proceedings, that whatever is settled thereby must be the result of an investigation conducted under the most favorable rules that mankind have been able to devise for the exposure of falsehood and the ascertainment of truth. Estoppel has become a revered doctrine in our jurisprudence, not because it protects fraud, but prohibits a party from disputing the truth.

"In *ex parte* proceedings the court necessarily acts upon a state of facts, and not infrequently upon constructions of law, presented alone by the petitioner, and the judgment rendered upon a one-sided presentation of the case is predicated largely upon the principle of truthfulness, honesty, and absence of fraud in the party invoking its jurisdiction. This is true in mandamus and injunction cases, but there the adverse party is given a subsequent day in court, when full opportunity is afforded to expose the falsehood, dishonesty, and fraud in the first proceedings. Not so in naturalization proceedings. If it be admitted that there is an adverse party in naturalization proceedings the adversary in reality never has a day in court.

"In the case of fraudulent naturalization there are *ordinarily* but two remedies: (1) A direct attack by bill in the proper court to set aside the judgment; (2) injunction restraining the party from exercising rights under the judgment, such as prosecuting a suit when valid citizenship is the essential prerequisite. *United States v. Norsch*, 42 Fed. Rep. 419; *United States v. Gleason*, 78 Fed. Rep. 396. But it is not necessary to discuss either of these remedies in determining the questions presented in the case under consideration, for it is conceded that this tribunal is without power to annul a judgment of naturalization even though it should be shown that it was fraudulently obtained; and the remedy by injunction would at least be of doubtful availability in the present case, because of the adequate facilities offered defendant for equitable defense in this jurisdiction, the only one having cognizance of claimants' case. The organic act provides that claims before this tribunal shall be adjudicated 'according to the principles of equity,' and it is a familiar principle of equity that 'he who comes into equity must come with clean hands.' This maxim—or, as it is otherwise expressed, 'He that hath

committed iniquity shall not have equity'—is the equitable application of a fundamental principle pervading the entire body of the law, 'that no one shall be permitted to profit by his own fraud or take advantage of his own wrong, or to found any claim on his own iniquity, or to acquire property by his own crime.' *Riggs v. Palmer*, 115 N. Y. 506; *Fetter on Equity*, 39.

"This is an undisputed principle and needs no elaboration, in the present case especially, since the defendant admits that the Commission can not go behind a decree of naturalization in the sense of attempting to nullify it, 'even upon a showing of the most palpable and bare-faced fraud.'

"It is a general rule, too familiar to require any citation of authorities in its support, that 'a judgment, either of a legal or of an equitable tribunal, may be, in effect, vacated by a court of equity, if it was obtained by fraud.' 2 *Freeman on Judgments*, Sec. 489.

"It is the just and proper pride of our matured system of equity jurisprudence that fraud vitiates every transaction; and however men may surround it with forms, solemn instruments, proceedings conforming to all the details required in the laws, or even by the formal judgment of court, a court of equity will disregard them all if necessary, that justice and equity may prevail.' *Warner v Blakeman*, 4 *Keys*, 507.

"Having invoked the jurisdiction of a tribunal specifically charged with applying the principles of equity in the adjudication of cases before it and virtually praying the enforcement of a judgment, which the defendant alleges was obtained by fraud, claimants can not complain if their demurrer admitting the truth of defendant's allegation and pleading the conclusiveness of the judgment is not allowed to arrest the court in the exercise of its unquestionable powers of equitable prevention. The defendant not only has the right to invoke the

remedy of equitable prevention, to the end that fraud shall not taint this litigation, but the peculiar character of the claim, being in reality a suit for damages against a foreign government whose liability, and none other, the United States has assumed, . . . imposes an obligation upon the defendant here to do so, to the end that ultimate justice may be done through the application of the principles of equity and of international law to the merits of the case.

“The judicial status of this tribunal, its jurisdiction and powers being thus defined and understood, it becomes unnecessary to discuss extensively the question whether the United States can, in a domestic tribunal, administering exclusively municipal law, controvert the judgment of another of its domestic tribunals conferring citizenship upon an alien, for we shall hold that in the investigation and adjudication of the questions that arise in this case the Commission is sitting in the capacity of an international tribunal. When domestic tribunals are thus sitting, it is the established principle that municipal law, in the absence of a treaty stipulating otherwise, must be subordinate to international law when they antagonize each other, as that is the law common to both parties. It is only where the question is not within the domain of international that the municipal law may be invoked to determine the proper solution of the question.

“Judgments of naturalization rendered by courts of competent jurisdiction, like other judgments not defective on their face, may be conclusive as between the naturalized alien and other parties raising the question before a domestic court administering only municipal law, and a careful exploration of the authorities relied upon by claimants show that they bear with substantial exclusiveness upon that class of cases. The case of *Spratt v. Spratt* (4 Pet. 392), is a leading case cited by counsel for claimants in support of the general propo-

sition that a judgment of naturalization is conclusive upon the Commission, 'whether or not the judgment of naturalization is as to Spain a foreign judgment.' That was a case involving the title to real estate in the District of Columbia, and by no sort of interpretation or construction involved the administration of international law. It was a dispute between parties in their individual capacities, one purely of local domestic law and administration, and therefore without any relevancy to the principles of international law administered by an international tribunal or a municipal court sitting in the capacity of an international tribunal.

"The case of *Campbell v. Gordon* (6 Cranch, 176) involved the question of title to land in Virginia. The question was, what effect should be given by a domestic tribunal to a judgment rendered in another domestic tribunal, the settlement of which required the application of municipal or domestic law pure and simple? No international question and no principle of international law arose in the case. The same may be said in reference to the case of *Stark v. Insurance Co.* (7 Cranch, 420). In that case the question of American citizenship arose on the objection of defendant to the record of naturalization of the plaintiff, and the objection went simply to the regularity of the proceedings and to the introduction of parol evidence in aid of the record. The Supreme Court held that it need not appear by the record of naturalization that all the requisites prescribed by law for the admission of aliens to the rights of citizenship have been complied with. It involved the ownership of American property by an American citizen, and the determination of that question was submitted to a municipal court of the United States administering purely domestic law. The fact that the judgment in these cases was a judgment of naturalization presents no international question, because

the statutes of the United States relating to naturalization are no more international in their character than the statutes which settle the rights of our citizens to the enjoyment of any other domestic privilege, and a judgment of naturalization pleaded in a cause involving the title to property in the United States before a domestic tribunal administering only municipal law raises no more of an international question than a judgment on contract or on promissory notes. The degree of conclusiveness of the judgment would be just the same in either case. It will be seen, therefore, that the question in all of these cases was simply the force and effect which should be given by a domestic tribunal to a judgment of another domestic tribunal administering purely municipal law. It is material, however, to notice that in none of these cases was the question of jurisdiction or fraud in the procurement of the judgment raised, and, therefore, that it does not appear what the decision in each of these cases might have been if the objection to the naturalization proceedings had been, as alleged in the case now under consideration, obtained through fraud practiced upon the court.

“Bearing in mind that the Commission in the trial of this case is ‘sitting in the capacity of an international tribunal;’ that in a former case it has been decided by the Commission ‘these claims remain in their nature international and are to be tried by the principles by which the liability of independent nations, one to another, is governed,’ and ‘that the sole question before this Commission is that of the primary liability of Spain, which is not in any way enlarged by the Government of the United States, to adjudicate and pay such claims,’ would it be impertinent or incompetent for Spain to challenge the applicability of the principles announced in the decisions referred to, and all others of similar import, upon the ground that they are the decisions of purely domestic

tribunals, administering the municipal law of the United States regarding a subject-matter with which it is in no wise concerned, namely, the settlement of titles to property which is always and everywhere determinable by the *lex loci*? Manifestly not. But suppose the response to be that nevertheless the judgment of naturalization of Ruiz, so far as the right of his heirs to maintain this action is concerned, is valid and binding in every jurisdiction until it is conclusively shown it was obtained by fraud, and that Spain should then offer in evidence the official record of proceedings before a Spanish tribunal of competent jurisdiction, wherein Ruiz, after his alleged naturalization in the United States, being at the time a resident of Cuba, in a case involving his allegiance to the Sovereign of Spain, had been adjudged to be a Spanish subject, and furthermore, that his attempt to acquire American citizenship was a fraud on his native land, would it be argued that this Commission must give full faith and credit to the American judgment of naturalization and must disregard the Spanish adjudication entirely? The mere asking of this question echoes its answer, and is an illustration of the unsoundness of the position that an international tribunal is to be bound by the judgment of the domestic tribunals of either one of the parties to the controversy.

“It is now universally admitted that every independent state has, as one of the incidents of its sovereignty, the power not only to regulate the local obligations of aliens resident in its territory, but to confer upon them national privileges and immunities, even the full rights of citizenship, by the proceeding called naturalization. The law for this proceeding, by which the nationality of a foreign-born citizen or subject is changed from that of birth to one of adoption, is the creature of modern states and necessarily local, and is a distinct invasion of the rights of the country of nativity over its subject or citizen, in

whatever part of the world, as maintained until within comparatively recent years. Such laws are made and administered without reference to the consent of the country of nativity to the release or the transfer of the allegiance of such subjects or citizens. The municipal laws of the States whose subjects or citizens are so naturalized being thus disregarded and in fact set at defiance, it must follow that the naturalization proceedings can not have conclusive extritorial application.

“The extritorial force of a judgment, like the law authorizing naturalization, is a thing of modern recognition, and therefore we must look to the more recent writers for the best opinions on this and allied subjects, and we find them in practical accord with the doctrine just stated. Calvo (*Derecho Internacional*, vol. 1, 295 et seq.), while laying down the same doctrine, says:

“‘International law recognizes the power (or faculty) in a state to naturalize the subjects or citizens of another; but naturalization does not take place by virtue of said international law, but as a consequence of local legislation; so that the new citizen or subject is the pure and exclusive creation of the civil and political laws of the country of adoption, and he will enjoy solely the rights, privileges, and immunities which they confer. And what has been said of naturalization applies to expatriation, or the breaking of the natural bonds of citizenship, which have their origin and are preserved forever in the shadow of local legislation. The right of expatriation, then, like that of naturalization, is subordinated under the point of view of international law to the general principle that each independent state is sovereign in its own territory and that its laws are binding upon all persons who are within its jurisdiction, but that they have no force beyond its territory.’

“The distinction drawn and the reasoning invoked by this eminent author make it perfectly clear that the pro-

ceedings or judgment of naturalization can be conclusive only within the jurisdiction of the country through whose laws the nationality of a subject or citizen is changed from the country of nativity to the country of the court granting the judgment.

“Conceding that it might be held by a domestic tribunal, sitting exclusively in its capacity of a municipal court and therefore administering only domestic law, that a judgment of naturalization rendered in a domestic tribunal of competent jurisdiction was *ipso facto* conclusive, it does not follow that it would hold the same way when sitting in the capacity of an international tribunal.

“The Commission, in a former case, has decided—

“‘That the sole question before this Commission is that of the primary liability of Spain, which is not in any way enlarged by the agreement of the United States to adjudicate and pay such claims,’ (Op. Commissioner Wood, 27), which is the equivalent of holding that Spain is the real defendant, and therefore entitled to make any defense which she could make before an international or mixed commission.

“The fundamental question, therefore, for present consideration is the effect given by international tribunals to judgments of a domestic tribunal of one of the parties to the controversy.

“Article VII of the treaty of 1794, between the United States and Great Britain, provided for indemnification by Great Britain to American creditors by reference to a mixed commission, and directed that ‘the Commission shall decide the claims in question according to the merits of the several cases and justice, equity, and the law of nations,’ language strikingly similar to that in the treaty under which this Commission is sitting.

“One of the first and most important questions that arose before the board of commissioners organized to carry the treaty of 1794 into effect was whether ‘the

sentence of the Supreme Court of the nation,' which it was admitted was 'binding on individual persons and things within the jurisdiction of the court,' was 'conclusive as to the law, not only on the subjects of this government but on foreign nations.'

"The tribunal decided that it was not conclusive, and Commissioners Gore and Pinckney, both eminent international authorities, rendered elaborate opinions discussing the question most thoroughly. Mr. Commissioner Gore said (quoting very briefly from his lengthy opinion):

"That the decision of any court, however respectable its members, is conclusive on foreign governments as to the law of nations, and that the principles on which it is founded may not be rightfully contested, as contrary to that law, is not, in my belief, warranted by just ideas of the equal independence of nations or by their practice.

"To suppose the decisions of the courts of any country conclusive evidence of the law of nations would be to suppose that nation always right who captures and condemns the effects of another, and that always wrong who complains of and on failure of other means seeks redress for such captures and condemnations by letters of marque and reprisal; and yet after a condemnation of effects taken in virtue of such letters, according to Mr. Gostling's position, such condemnation would be conclusive evidence of the law of nations.

"It does not coexist with the equality of independent nations to regard the decision of one, merely because it was the decision of that nation, as conclusive evidence of the law of nations; and other nations or other judicial courts pronouncing that law would adopt the decisions of no court only so far as such appeared to them to correspond with its principles and rules.

"The decision of a judicial court, judging on the law of nations, can not be considered more conclusive or binding on others than the judgment of that nation

expressed by a different organ of its government. In the practice of nations there are many instances of difference of opinion as to what acts are, or are not, correspondent with the law of nations, and each asserting and maintaining its right to decide for itself against the express opinion of the other.' 3 Moore's Int. Arb. 3162-3163.

"The opinion of Mr. Pinckney is even more elaborate (3 Moore's International Arbitrations, 3180, 3206). It will be remembered that the sentence (judgment) of condemnation in an admiralty court had, upon appeal of the claimants, been affirmed by the lords commissioners of appeal, the supreme judicature in the Kingdom in matters of prize. The leading question was whether the international tribunal was bound and concluded by that affirmance so as to be prevented from examining into the case. The principal objection urged by the agent of the British government was that the judgment was conclusive because it had 'been given in a solemn decision of the supreme court of the law of nations in the kingdom which other authorities, proceeding by the same law, are bound to respect and confirm.' A brief quotation from the opinion of the distinguished commissioner will suffice to show that at this early date in the history of international arbitration the conclusiveness of a foreign judgment was disputed in a discussion of the subject so elaborate and learned that the views then expressed were adopted by a majority of his colleagues and accepted as correct expositions of the doctrine by both governments, and substantially without exception have been followed by every international tribunal down to the present time. Says Mr. Pinckney:

"Upon the fullest consideration of this objection I have stated it to be my opinion "that the affirmance of the condemnation by the lords does in no respect bind us as commissioners under the seventh article of the treaty,

and that it is no further material to our inquiries in the execution of the trust confided to us than as it goes to prove that compensation was unattainable by the claimants in the ordinary course of justice."

"It has been explicitly understood that the opinion I have thus delivered is in precise conformity with that of His Majesty's government; but as the objection to which it is opposed has been repeated by the agent on every occasion that has since occurred, notwithstanding the avowed disapprobation of its principles by those from whom his authority is derived, and as one of the board has not only sustained the objection by his ultimate opinion, but recorded the reasons which have induced him to do so in the nature of a protest against the decision of the majority, I feel it to be my duty to reduce to writing and to file the reflections which have led me to the foregoing conclusion.'

"Denying with indignation the suggestion of the British agent that the King was a party, and therefore the judgment was more especially conclusive, he said:

"But even if the allegation were true, there is certainly more novelty than correctness in the argument that a judgment of His Majesty's own court, composed of the members of his own council, is the more especially entitled to a conclusive quality . . . because His Majesty was himself a party to the suit. I am very far from being disposed to insist that the judgment of the lords of appeal is *less* to be respected on that account; but it is neither indecorous toward that high court nor unreasonable in itself to say that the extensive binding force, now for the first time attributed to their sentences, could not be rested on a foundation so little calculated to support it.

"In order to ascertain whether the sentence of the lords in this case (however unjust it may be) is conclusive upon this board *under the treaty*, it is previously to be

inquired whether the government of the United States, independent of the treaty, would upon the application of the claimants for redress against the capture and condemnation confirmed by it, by way of reprisals or otherwise, be bound by the law of nations to esteem it just, although upon the face of it it was manifestly the reverse.'

"The United States has never been more ably represented on an international commission than in this initial instance with Great Britain. Mr. Gore, popularly known as the legal preceptor of Daniel Webster, was one of the profoundest lawyers of his day, filled many of the high places aspired to by the profession, including the governorship of Massachusetts and Senator in Congress. But his most distinguished service was as a commissioner under the treaty of 1794.

"Among the brilliant men who have adorned the public service of this country William Pinckney deservedly stands in the front rank. John Bassett Moore says of him: 'Never a seeker after preferment, he was continually chosen, either by the suffrages of his fellow-citizens or by executive favor, to positions of public trust and responsibility, which he filled with distinction to himself and advantage to his country.' At home and abroad, in the Senate of the United States, in the Cabinet, as minister to Russia and the court of Naples he was equal to every demand. But his distinguishing preeminence was as a lawyer. No lawyer ever received a stronger tribute than was paid to him by Chief Justice Marshall in a formal opinion of the Supreme Court. *The Nereide*, 9 Cranch, 388, 430.

"It is not strange, therefore, that the opinions delivered by Mr. Gore, and more especially by Mr. Pinckney, as members of the board of commissioners under Article VII of the treaty of 1794, should have been accepted by the two English great constitutional nations of the world a century ago as the correct interpretation of the

international problems discussed by them. Nor is it to be marveled at that down through our developing jurisprudence the principles enunciated by them have come to us as established doctrines. Referring to Mr. Pinckney's opinions, and especially the one in the case of the *Betsey*, Mr. Wheaton said: 'They are finished models of judicial eloquence, uniting powerful and comprehensive argument, with a copious, pure, and energetic diction.'

"Another eminent writer on international law, a publicist of world-wide fame and authority, discussing this question, says:

"'It was maintained before the British and American Mixed Commission, sitting in London under the treaty of 1794, that a decision of a British prize court estopped the party against whom it was made from proceedings, when a foreigner, through his own government. This was contested by Mr. Pinckney, and his position was confirmed by the arbitration, acting under the advice of Lord Chancellor Loughborough, and is now accepted law.' 2 Wharton, 2d ed., Sec. 242.

"And in 3 Wharton (2d ed., 198) it is said:

"'The prevalent opinion now is that in international controversies a sovereign can no more protect himself by a decision in his favor by courts established by him, even though they be prize courts, than he can by the action of any other department of his government.'

"The doctrine is so generally approved by writers on international law that we deem it unnecessary to refer any further to that vast field of authority.

"Perhaps no government ever appeared to greater advantage than the United States did before the Geneva arbitration, when Hon. Caleb Cushing, Hon. William M. Evarts, and Chief Justice Waite maintained the doctrine of the inconclusiveness of a judgment rendered in a British court before that august tribunal, in the case of

The Florida. In that case the vice-admiralty court of the Bahamas, by its decree, which is given at page 521 of the fifth volume of the appendix to the American case, acquitted the *Florida* of every charge, but the great lawyers above named contended for the principle that:

“‘As between the claimants of the vessel and Her Majesty’s government seeking to enforce a forfeiture under the provisions of the foreign enlistment act, this decree may have been conclusive; but as between the United States and Her Majesty’s government it has not that effect.’

“And this is exactly the distinction we are endeavoring here to point out. Regardless of whether judgments of naturalization are under all circumstances conclusive as between the naturalized alien and any other person raising the question in the United States, Spain was no party to those proceedings, and before a tribunal, whether in all its features international, or a municipal court sitting in the capacity of an international tribunal, has the right to inquire into the facts upon which those proceedings were based and the judgment rendered. The conclusive character which it is argued attaches to domestic judgments, where sued upon in another state of the United States, is, in virtue of the constitutional provision requiring that ‘full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state,’ and of the act of Congress passed in effectuation of this provision of the Constitution. The Supreme Court, in the case of *Christmas v. Russell*, 5 Wallace, 290, has adjudicated this very question. The court says:

“‘Common law rules placed foreign judgments upon a different footing, and those rules remain, as a general remark, unchanged to the present time. Under these rules a foreign judgment was *prima facie* evidence of the debt, but it was open to examination, not only to show that

the court in which it was rendered had no jurisdiction of the subject-matter, but also to show that the judgment was fraudulently obtained.'

"It is not denied that some of the authorities relied upon in support of the conclusiveness of a foreign judgment *seem* to sustain this contention and therefore may serve to raise the presumption that judgments *in rem*, under some extraordinary conditions, may not be inquired into, even by an international tribunal, yet a close scrutiny of the facts, as well as the law in the cases referred to, leave it to be indisputably true that a foreign judgment is universally impeachable for fraud. Black states the principle thus:

"'In the present state of the English authorities it seems to be well settled that fraud may always be set up as a ground of impeachment against a foreign judgment, and that if it be shown that fraud was successfully practiced in the concoction or procuring of the judgment the court will treat it as of no effect and will refuse to recognize or enforce it. (2 Black on Judgments, Sec. 844, citing numerous English adjudications.)'

"Freeman on Judgments (4th ed., Vol. 2, Sec. 595) is to the same effect, saying that a foreign judgment to be conclusive must be 'free from the taint of fraud in the procurement.'

"Story on Conflict of Laws (Sec. 608), says:

"'The general doctrine maintained in the American courts in relation to foreign judgments is that they are *prima facie* evidence, but that they are impeachable; but how far and to what extent this doctrine is to be carried does not seem to be definitely settled. It has been declared that the jurisdiction of the court and its power over the parties and the things in controversy may be inquired into, and that the judgment may be impeached for fraud. Beyond this no definite lines have as yet been drawn.'

"The inference clearly is that this eminent jurist, writing half a century ago, held the opinion that foreign judgments were only *prima facie* evidence, and that they were subject to impeachment generally. Black on Judgments, the latest work, says:

"So far as the question has been considered by our own courts this (the doctrine of the English authorities, *supra*) may be said to be also the prevailing doctrine in this country, citing Rankin v. Goddard, 54 Me. 28; Fisher v. Fielding, 67 Conn. 92; Hilton v. Guyot, 159 U. S. 113, and many others.'

"It has very recently been held in an English case, where the action was upon a judgment recovered by the plaintiff against the defendant in a Russian court, and the defendant pleaded that the judgment was procured by fraud and deceit of the plaintiff and by false representations and false evidence given to the court, that the defense was good and sufficient, and this notwithstanding the question of the alleged fraud had been investigated and negatived in the foreign court. Abouloff v. Oppenheimer, 10 Q. B. Div., 295.

"Singularity enough, Black, who refers to this decision with approbation, follows this (see Sec. 844) with the remark that—

"In a late American case where the same question arose this ruling was disapproved, and it was stated that the doctrine of the English decision was not borne out by the cases cited in its support, and the opinion was expressed that false testimony and the suppression of the truth do not constitute the kind of fraud by which a judgment is vitiated and may be nullified.'

"He was referring to the case of Hilton v. Guyot (C.C., 42 Fed. 252), apparently overlooking the fact that this case had been reversed by the Supreme Court (159 U. S. 113). In that case, on appeal, the Supreme Court

undoubtedly sustain the English doctrine, as stated by Black:

“‘But it is now established in England, by well considered and strongly reasoned decisions of the Court of Appeals, that foreign judgments may be impeached, if procured by false and fraudulent representations and testimony of the plaintiff, even if the same question of fraud was presented to and decided by the foreign court.’

“Mr. Justice Gray, who delivered the opinion in the *Hilton v. Guyot* case, and from which the paragraph just above quoted is taken, discusses extensively the decisions of foreign courts generally upon that question and concludes his opinion as follows:

“‘In holding such a judgment, for want of reciprocity, not to be conclusive evidence of the merits of the claim, we do not proceed upon any theory of retaliation upon one person by reason of injustice done to another; but upon the broad ground that international law is founded upon mutuality and reciprocity, and that by the principles of international law recognized in most civilized nations, and by the comity of our own country, which it is our judicial duty to know and to declare, the judgment is not entitled to be considered conclusive.

“‘By our law, at the time of the adoption of the Constitution, a foreign judgment was considered as *prima facie* evidence, and not conclusive. There is no statute of the United States, and no treaty of the United States with France, or with any other nation, which has changed that law, or has made any provision upon the subject. It is not to be supposed that, if any statute or treaty had been or should be made, it would recognize as conclusive the judgments of any country which did not give like effect to our own judgments. In the absence of statute or treaty it appears to us equally unwarrantable to assume that the comity of the United States requires anything more.

“‘If we should hold this judgment to be conclusive, we should allow it an effect to which, supposing the defendants’ offers to be sustained by actual proof, it would, in the absence of a special treaty, be entitled in hardly any other country in Christendom, except the country in which it was rendered. If the judgment had been rendered in this country, or in any other outside of the jurisdiction of France, the French courts would not have executed or enforced it, except after examining into its merits. The very judgment now sued on would be held inconclusive in almost any other country than France. In England, and in the colonies subject to the law of England, the fraud alleged in its procurement would be a sufficient ground for disregarding it. In the courts of nearly every other nation it would be subject to reexamination, either merely because it was a foreign judgment, or because judgments of that nation would be reexaminable in the courts of France.,

“The principle thus impressively announced by the highest tribunal in the United States has been announced in many state decisions, but nowhere with more precision and force than in the case of *Bryant v. Ela*, Smith (N. H.), 396, 404:

“‘The respect which is due to judgments, sentences, and decrees of courts in a foreign state, by the law of nations, seems to be the same which is due to those of our own courts. Hence the decree of an admiralty court abroad is equally conclusive with decrees of our admiralty courts. Indeed, both courts proceed by the same rule, are governed by the same law—the maritime law of nations (Coll. Jurid. 100), which is the universal law of nations except where treaties alter it.

“‘The same comity is not extended to judgments or decrees which may be founded on the municipal laws of the state in which they are pronounced. Independent states

do not choose to adopt such decisions without examination. These laws and regulations may be unjust, partial to citizens, and against foreigners; they may operate injustice to our citizens, whom we are bound to protect; they may be, and the decisions of courts founded on them, just cause of complaint against the supreme power of the state where rendered. To adopt them is not merely saying that the courts have decided correctly on the law, but it is approbating the law itself. Wherever, then, the court may have proceeded on municipal law the rule is that the judgments are not conclusive evidence of debt, but *prima facie* evidence only. The proceedings have not the conclusive quality which is annexed to the records or proceedings of our own courts, where we approve both of the rule and of the judges who interpret and apply it. A foreign judgment may be impeached; defendant may show that it is unjust, or that it was irregularly or unduly obtained. Doug. 5, note.'

"Referring to all the treaties and the decisions of international tribunals since the treaty of 1794 with Great Britain down to the arbitrations just concluded with Venezuela, we have been unable to find a single case in which the principle laid down in the case of the *Betsey*, and which is in this case adhered to, where the contrary doctrine—the one contended for by claimants in this case—has been maintained. The only instance in which there is a semblance of a departure from this doctrine was in the case of the United States and Spanish Commission of 1871. Mr. Blaine, then Secretary of State, instructed the agents of the United States, in regard to the powers of that Commission that 'a certificate of naturalization as a citizen of the United States can not be impeached for fraud before an international commission.' It is clearly shown by his letter, that, as the Commission had been established by the executive act

of the United States and Spain, and as the executive departments of the two governments had no power to annul or impeach a judgment of the other country, it was his opinion that the Commission, the creature of the two countries, could not. Mr. Evarts, however, Mr. Blaine's predecessor as Secretary of State, and Mr. Frelinghuysen, his successor in office, both great lawyers, held opinions contrary to Mr. Blaine's. Mr. Evarts said, in his letter to the Spanish minister, March 4, 1880, in regard to the powers of the Spanish-American Commission of 1871, that—

“The Government of the United States from the first considered, and it is still maintained, that the Commission established under the convention of 1871 was an independent judicial tribunal, possessed of all the powers and endowed with all the properties which should distinguish a court of high international jurisdiction, alike competent in the jurisdiction conferred upon it to bring under judgment the decisions of the local courts of both nations, and beyond the competence of either government to interfere with, direct, or obstruct its deliberations.’

“And Mr. Frelinghuysen wrote to Mr. Suydam, counsel for the United States before the Commission, September 25, 1882, as follows:

“This government, while holding, as before stated, that the judgment of naturalization, unimpeached by fraud, is complete evidence of its own validity, can not deny that, under the terms of the agreement, the certificate of naturalization may be proven to have been obtained fraudulently. . . . The true rule to govern the Commission is that when an allegation of naturalization is traversed and the allegation is established *prima facie* by the production of a certificate of naturalization, or by other competent and sufficient proof, it can only be impeached by showing that the court which granted

it was without jurisdiction, or by showing, in conformity with the adjudications of the courts of the United States on that topic, that fraud, consisting of intentional and dishonest misrepresentation or suppression of material facts by the party obtaining the judgment, was practiced upon it, or that the naturalization was granted in violation of a treaty stipulation or of a rule of international law.'

"The case of *Ortega*, No. 91, before the United States and Spanish Commission of 1871, was decided before Secretary Blaine asserted the proposition that a judgment of naturalization was conclusive of every question before the Commission. In that case the judgment was not attacked for fraud nor for any want of jurisdiction in the court which granted it, but merely on the grounds that the proceedings were irregular, and that the facts before the court granting the naturalization were untrue. The only question before the Commission was its right to go behind the judgment and ascertain the truth; and upon their interpretation of international law, they held that the judgment of naturalization granted by a court of the United States of competent jurisdiction was not conclusive. It was, perhaps, because of the possible effect of this decision upon future cases that Secretary Blaine took the emphatic position he did, which temporarily arrested the progress of the Commission and resulted in a modification of the agreement between the two governments under which the Commission was sitting. This also explains Secretary Frelinghuysen's diplomatic reference to the 'terms of the agreement' in his letter of September 25, 1882, in which he says: 'This government, while holding, as before stated, that the judgment of naturalization, unimpeached by fraud, is complete evidence of its own validity, can not deny that, under the terms of the agreement, the certificate of naturalization may be proven to have been obtained

fraudulently.' A close study of Mr. Blaine's letter, and the argument of the advocate of the United States in the Buzzi case, No. 22, which arose subsequent to Mr. Blaine's declaration, leads us to think that their contention was based on the theory that the agreement itself expressly limited the right of Spain to require the production of the naturalization papers, and when they were shown, the right to question the naturalization was at an end. At any rate all the cases before that Commission involving this question, whether before or after Mr. Blaine's declaration and the modification of the terms of the agreement, were decided against the conclusiveness of a foreign judgment. (See in addition to cases before referred to, Angarica, No. 17, and Criado, No. 29.)

"The United States and Mexican Commission of 1873, in the case of *Howlands v. Mexico*, which was a customs case, where the Supreme Court of Mexico ordered the restoration of the property, the Commission held that it had jurisdiction, and disregarded the judgment of the Mexican court, which had refused damages and costs and awarded claimant \$18,000. This and other cases following show that the decisions on this subject are not peculiar to prize judgments.

"Before the United States and Costa Rica Commission of 1860, in the *Medina* case, it was held that the Commission was not bound by a judgment of naturalization in the United States. The case is reported at length in 3 Moore's International Arbitrations, page 2583, et seq. The following brief extract, however, will clearly show the opinion of that Commission:

"'To give to naturalization certificates in a foreign land or before an international tribunal an absolute value, which they have not in the United States, where they may eventually be set aside, while Costa Rica, not recognizing the jurisdiction of any tribunal in the United States, would be left with no remedy. Moreover, this

Commission would be placed in an inferior position and denied a faculty which is said to belong to a tribunal in the United States.”*

“The United States and Mexican Commission of 1868, in the case of Mather and Glover, No. 178, referring to a judgment of the Supreme Court of Mexico, and speaking by Commissioner Wadsworth, says:

“‘Such a decision by the Supreme Court may be binding upon all inferior tribunals in Mexico, and while it is entitled to much respect here it is not conclusive upon this Commission.’

“The British and American Mixed Commission of 1871 held that it had power to review judgments in prize cases in the courts of the United States. Hale’s report of that Commission, on page 88, says:

“‘The question was early raised, on the part of the United States, as to the jurisdiction of these prize cases by the Commission, both in respect to cases where the decision of the ultimate appellate tribunal of the United States had been had, and to those in which no appeal had been prosecuted on the part of the claimants to such ultimate tribunal. As to the former class of cases, the undersigned may properly state that he personally entertained no doubt of the jurisdiction of the Commission as an international tribunal to review the decisions of the prize courts of the United States where the parties alleging themselves aggrieved had prosecuted their claims by appeal to the court of last resort. As this jurisdiction, however, had been sometimes questioned, he deemed it

* NOTE—There appears to be a slight omission in this citation. The umpire’s words at this point of his decision, as reported in 3 Moore’s International Arbitrations, 2587–8, are as follows:

“It has been alleged in behalf of the claimants that even admitting that these acts of naturalization are intrinsically void, it is not in the power of this commission to reject them as proof, if they are not first set aside as fraudulent by the same tribunal from which they were obtained.

“To admit this would give those certificates in a foreign land or before an international tribunal an absolute value, which they have not in the United States,” etc.

desirable that a formal adjudication by the Commission should be had upon this question. The Commission unanimously sustained their jurisdiction in this class of cases, and, as will be seen, all the members of the Commission at some time joined in awards against the United States in such cases.'

"The United States and French Commission of 1880, in the Kuhnagel case, as reported in 3 Moore's International Arbitrations, page 2649, held that the Commission 'had the right to examine the original proceedings for naturalization, and, finding that the certificate of naturalization was obtained by misrepresentation of material facts, we hold it to be null and void.'

"Before the Geneva Tribunal it was urged by Great Britain that the [judgment of the] Vice-Admiralty Court in the Bahamas acquitting the *Florida* should be accepted as conclusive. This great tribunal, however, held otherwise, and several opinions were delivered on the subject. The opinion of Count Sclopis, speaking for the Commission, says:

"'The decision of the vice-admiralty court may then be considered as conclusive, even if not perfectly correct, as between those who claimed the vessel and the British Government, which claimed its confiscation under the clauses of the foreign-enlistment act; but I do not think it is sufficient to bar the claim of the United States against Great Britain. The United States were not parties to the suit; everything relating to it is for them *res inter alios acta*.'

"Mr. Staempfli in a separate opinion in the same matter says:

"'The objection that the judicial decision at Nassau relieves Great Britain of all responsibility can not be maintained. As regards the internal (or municipal) law, the judgment is valid; but as far as international law is concerned, it does not alter the position of Great Britain.' Papers Relating to the Treaty of Washington, Vol. 4, 92.

“Before the very recent Commission between the United States and Venezuela of 1903 the identical question that we have here under consideration arose, namely, the conclusiveness of a judgment of naturalization in the United States, and the unanimous decision of the Commission was that such a judgment is not ‘conclusive upon the United States or upon this tribunal.’ The opinion was rendered for the Commission by Mr. Bainbridge, Commissioner for the United States. It gives an exhaustive résumé of the adjudications by international tribunals, the decisions of the courts of England and the United States, also of the diplomatic expressions of the State Department, and expresses its own conclusions as follows:

“‘The present Commission is charged with the duty of examining and deciding all claims by citizens of the United States against the Republic of Venezuela. It is absolutely essential to its jurisdiction over any claim presented to it to determine at the outset the American citizenship of the claimant. And the fact of such citizenship, like any other fact, must be proved to the satisfaction of the Commission, or jurisdiction must be held wanting.

“‘Whatever may be the conclusive force of judgments of naturalization under the municipal laws of the country in which they are granted, international tribunals, such as this Commission, have claimed and exercised the right to determine for themselves the citizenship of claimants from all the facts presented.’ See Ralston’s report, Venezuelan Arbitrations, 1903, 42, and authorities there cited.

“No case has come under our observation where the question arose before a purely domestic tribunal exercising international powers and jurisdiction, but it is not perceived that the rule could or should be different in such a case.

“The judgment of naturalization is *prima facie* evidence

of its regularity and will be given 'full faith and credit' until the defendant overcomes its conclusiveness by proof. The degree of proof which will constitute a sufficient demonstration by the defense in cases of fraudulent naturalization must necessarily rest in the discretion of the Commission, there being no adjudicated cases, so far as we have been able to discover, which furnish definitive guides in this regard.

"The burden upon the defendant in this case is to prove the legal fraud perpetrated by claimant in the procurement of his naturalization certificate and can not be shifted by evidence showing errors or irregularities in the proceedings or by raising a doubt merely in the mind of the Commission. The proof can not stop at showing that the facts made to appear to the satisfaction of the court which granted naturalization were false. It must at least go to the extent of satisfying the Commission that the claimant knew the statements and representations made by him at the time he filed his original declaration and at the time of procuring the judgment were false, or facts must be proven from which such fraud would be implied, and it must appear that his false representations and the representations procured by him to be made by the other witnesses were intentionally used by him for the purpose of deceiving the court and thereby securing his certificate of naturalization.

"The demurrer to defendant's amendment to the answer is overruled without arresting the further progress of the case, which will proceed now to a hearing upon evidence to be submitted regarding fraud."

Commissioner Maury, in an able dissenting opinion, after setting forth the facts, the contentions of the parties, and the status of the case before the Commission, said:

"The Commission, without any claim whatever of jurisdiction to cancel or compel the surrender of the certificate of naturalization issued to Ruiz, has, nevertheless,

by overruling the demurrer, concluded to go behind the certificate and investigate the charge of fraud in its procurement, and, in case the charge is established, refuse to give the certificate effect *in this case*, leaving it, however, to be treated as a valid and operative certificate for all other purposes in the hands of the widow and children of Ruiz. In other words, as I understand the position of the Commission, it amounts to this, in the last analysis, that the certificate of naturalization held by Ruiz for seventeen years, and up to his death, is worthless in this case on what I conceive to be *ethical grounds*, but that it may be, at the same time, valid and operative elsewhere on *juridical grounds*.

"The position of the Commission is contradictory to one of the best settled and most useful principles of private international law; which is remarkable, considering that the Commission in deciding this case has proceeded on the idea that it is invested with the powers of an international tribunal established by treaty between nations, among which, it is said, is the power of administering justice by the rules of the law of nations, unhampered by those of municipal law. And here it should be understood that by a fiction Spain, without interest, substantial or sentimental, is made to perform a ghostly part in the purely domestic controversies between American citizens and their government before this Commission, which, by this forced process, is supposed to be invested with an international character.

"It is conceded that by the municipal law, as laid down in the federal and state courts of the United States, the Commission could not have overruled petitioners' demurrer, and I hope to be able to show that the action of the Commission on the demurrer is equally unwarranted by the law of nations.

"I will begin by quoting a remark of Lord Hardwicke's which is characterized by great good sense and frequently referred to. His Lordship, speaking with regard

to the alleged validity of a certain foreign marriage, said: 'It has been argued to be valid from being established by the sentence of a court in France having proper jurisdiction. And it is true, that if so, it is conclusive, whether in a foreign court or not, *from the law of nations in such cases; otherwise the rights of mankind would be very precarious and uncertain.*' *Roach v. Garvan*, 1 Ves. Sr. 159.

"Upon the same principle of general international convenience the Supreme Court, in the great *Kosciusko* case, allowed in evidence, to prove kinship, two decrees of Russian Courts of Nobility, treating them as purely *in rem* and good 'against all the world,' having been rendered by courts of competent jurisdiction. *Ennis v. Smith*, 14 How. 400, 430.

"'It is for the convenience of mankind that judgments *in rem* should be binding on all the world, . . .' said Mr. Justice Fry, interrupting counsel, in the case of *De Mora v. Concha* (29 Ch. Div. 292), where the effect of judgments *in rem* was extremely well discussed at the bar.

"There is commanding authority for the proposition that judgments *in rem* defining permanent personal *status* are not open to attack or question collaterally *for any purpose*. The convenience of the nations requires that such *status* should stand effective everywhere until annulled by the authority that defined it. And the same may be said of cases of permanent *status* not originating in a judicial act.

"By permanent *status* I mean a personality conferred by law without limitation as to time or place, such as naturalization, legitimacy, adoption, and marriage. See *Minor on Conflict of Laws*, Sec. 71, note 5, p. 143, and Sec. 97, p. 212, ed. 1901; *Miller v. Miller*, 91 N. Y. 315, 319; *Ross v. Ross*, 129 Mass. 243; *Adams v. Adams*, 154 Mass. 290, 293.

"The principle as stated above belongs to private international law and not to municipal law, although, of course, recognized by it, as is obvious from the following authorities:

"Story says that this rule, so widely favored by the continental jurists, owes its beginning to 'the extreme inconvenience which would otherwise result to all nations from a perpetual fluctuation of capacity, state, and condition upon every accidental change of place of the person or of his movable property.' Conflict of Laws, Sec. 67.

"The rule as to personal *status* is the result of the *tacit agreement of nations*, attested by the almost unanimous agreement of authors. Fœlix, Droit International, par Demangeat, Tome 1, p. 64, Paris, 1866.

"Boullenois says that the rule is for the greatest good of commerce and of intercourse among men. Traité, etc., Tome 1, 152. He also refers to the fact that Burgundus, who denied any effect to a judgment outside the country where rendered, made a single exception in favor of judgments that determine the *status* and conditions of persons. Id., 603.

"Pardessus says: 'The general consent of civilized nations has decreed that whatever concerns the capacity of an individual should be regulated by the laws of the country to which he belongs.' See Fœlix, Tome 1, 62.

"To these authorities Fœlix and Demangeat add a long list of others, to the same effect. Id., 62.

"From this universality of the permanent personal *status*, we have the necessary, the inevitable deduction of its *unity and indivisibility*. It is no exaggeration to say that it clings to the individual as the leprosy does to the skin, to borrow the forcible, if not elegant, illustration of some of the older authorities. Boullenois says the personal *status* pervades the whole being to whom it belongs. Others illustrate the idea thus: *Qualitas personam sicut umbra sequitur*.

“To violate this principle of unity and indivisibility, as the Commission appears to have done unconsciously in this case, is to commit a legal solecism; for how can we speak of a person as, at the same time, legitimate and illegitimate; as of age and not of age; as capable and incapable of managing his affairs, and as being a citizen and not a citizen of the United States? Such is the character of the illustrations used by the Continental jurists. Fœlix, Tome 1, 61; Proudhon, *Traité des Personnes*, Tome 1, 82.

“Indeed, it would be as incongruous to speak of a person as a leper in part and at the same time as whole, or as illegitimate in some respects although judicially found to be legitimate in all respects, or as having two mothers, as for an international tribunal to declare a man an alien for the purposes of a particular case, who is at the same time admitted to be a citizen in all respects by a judgment of naturalization rendered by a competent court.

“In the face of these great names I am unable to see how this Commission, assuming, as it does in this case, to have the power that belongs to an international tribunal established by treaty between nations, can consistently refuse to respect the principle of unity and indivisibility which is ascribed to personal *status* by the private law of nations. This is the more remarkable when we consider that a judgment fixing the *status* of a mere thing is unassailable collaterally anywhere, *although the validity of the reasons for such judgment may be inquired into*, a distinction which does not appear to have excited the attention of the majority. *De Mora v. Concha, supra*. In other words, a judgment fixing the *status* of a ship stands on a higher plane than one establishing the citizenship or legitimacy of an individual, which is hardly agreeable to reason.

“In a recent great case in England it was seriously

doubted whether any degree of fraud in a foreign sentence *in rem* would affect the title of a *bona fide* purchaser under that sentence. *Castrique v. Imbie*, L. R. 4 H. L. 414, 433. With such a case compare that of the innocent widow and children of Ruiz standing in the presence of this charge of fraud against the husband and the father, made for the first time eight years after his death and twenty-five years after the judgment of naturalization was rendered. Are not these innocents entitled to as much protection under their judgment *in rem* as the innocent purchaser in the case supposed possibly could be? Dismiss them from the Commission with the impress of American nationality still on them uneffaced, and we give Spain unanswerable ground to repudiate them as Spanish claimants, while by our own act we make them outcasts with nowhere to turn for redress.

“Why the United States did not institute a direct proceeding in the proper court to cancel the certificate of naturalization issued to Ruiz has not been explained; and my voice is against allowing her to do *per indirectum* what it would, perhaps, better become her dignity to do *per directum*. Indeed, if the matter pleaded by the defense were not hopelessly bad, the Commission might now by analogy to the practice in chancery, order the counsel for the government to institute a direct proceeding in the proper court to cancel the Ruiz certificate, holding this case, meanwhile in abeyance.

“But whether Ruiz was forsworn or not in obtaining naturalization, I do not think the government should be permitted to raise a contest on the point with his widow and children by a direct proceeding even.

“Ruiz having held unquestioned the *status* of citizen of the United States up to the time of his death, some seventeen years, I deem it too late to spring the issue when he, the only witness who, presumably could

meet it, is in his grave. His lips being sealed the government should not be allowed to speak either.

"Such a proceeding is against fair play everywhere, and humanity revolts at it. I take pride in saying that the common law abhorred it. By that system, where a man, born out of wedlock of parents who afterwards intermarried, was treated by them as legitimate all his life and on his father's death allowed to enter as heir and die 'seized in peace' leaving a son, for instance, that son took by descent to the exclusion of the lawful heir, whose entry and action were taken away *absolutely*,* because to allow either *would have been to bastardize after death him who had been treated as legitimate all his life*, which the law would not tolerate. *Justum non est aliquem post mortem facere bastardum qui toto tempore vitæ suæ pro legitimo habebatur*. Co. Litt. 244a; Sir Richard Lechford's case, 8 Co. Rep. 101a.

"Can Ruiz, who lived and died a lawful citizen, now be made a *bastard citizen* in his grave, as it were, for the purpose of defeating the claim of his innocent widow and children?

"In the recent case of *Clyde Mattox v. The United States* (156 U. S. 237), you will find this principle of fair play strongly upheld. There it is laid down that a witness on a former trial who had died could not be discred-

* "NOTE—This is remarkable, because in other instances descent cast only puts the real owner *to his action*, but here descent cast *destroys the right*, leaving the lawful heir, *though an infant at the time of descent cast*, neither entry nor right. Says Lord Coke:

"'Hereby it appeareth that this discent differeth from other discent, for this discent barreth the right of the mulier [the lawful heir], whereas other discent do take away the entrie only of him that right hath, and leaveth him to his action. but here by the dying seised of the bastard, his issue is become lawfull heire. It is holden that if the mulier [the lawful heir] bee within age at the time of the dying seised, that nevertheless hee shall bee barred, because the issue of the bastard is in judgment of law become lawfull heire, and the law doth prefer legitimation before the privilege of infancie.' Co. Litt. *ubi supra*.

ited on the second trial by evidence of contradictory statements, because death had cut him off from an opportunity to protect his character and explain away the supposed contradiction; and this, though justice itself should thereby fail.

“Could there be a stronger plea for the application of the principle of fair play than the case before us presents?

“But assuming it to be of moment, which in in my judgment it is not, to determine whether this Commission is entitled to take rank with international tribunals or is only a domestic municipal court, I am of opinion that a tribunal to be international and, therefore, as held by the majority, unhampered by municipal law, must in the nature of things be created by treaty between independent nations, and that it seems repugnant to reason to hold that Congress had power to invest this Commission with authority to exercise a jurisdiction above and beyond the Constitution and laws of the United States and the jurisprudence administered by the Federal courts.

“It is true Congress has power to establish prize courts whose jurisdiction is to administer international law in time of war in connection with maritime captures, but the authority to do so is necessarily implied from the power conferred by the Constitution on Congress to declare war. So with the jurisdiction conferred by Congress on consular courts established in oriental countries. Such legislation is for the purpose of carrying out the provisions of treaties entered into between the United States and such countries and is not necessarily in harmony with the Constitution of the United States. (Revised Statutes of the United States, Sec. 4083, and the following sections to the end of Title XLVII.)

“Plainly, there is nothing in the treaty of peace that calls for the establishment of an international tribunal

or, indeed, one of any kind. The most that can be said is that by Article VII of the treaty the United States agreed to 'adjudicate and settle' the claims released by the article, but it was left entirely to the United States to determine how the stipulation should be carried out. Indeed, the failure of the treaty to designate the way in which the adjudication should be performed is, of itself, conclusive evidence that the matter was left entirely to the United States, Spain having no longer any interest in the released claims, which she had fully satisfied by cessions of territory, although, indeed, her spectre is being continually raised here to serve some special purpose.

"Of course this Commission, like any other domestic court, must apply the rules of international law when applicable; but, at the same time, where that code conflicts with municipal law the latter must govern as the law of the land. When, therefore, Congress legislates in contravention of a treaty, the courts hold that such legislation supersedes the treaty as a rule of civil conduct; notwithstanding the treaty, by the law of nations, stands unrepealed, so far as the other contracting power is concerned.

"The case of *The Ship Rose v. The United States* (36 Ct. Cls. 290) seems to be much relied on as an authority to show that this Commission, in doing what it calls international justice, is not to be controlled by municipal law. But I think the case is misconceived and not at all in point.

"It was a French spoliation case over which the Court of Claims had no jurisdiction as a court with power to render a judgment. Indeed, there was nothing contentious in the case, inasmuch as Congress had never consented that the United States should be sued at all and there was consequently no real plaintiff or real defendant, but merely the form of an adversary proceeding. In truth, the Court of Claims was simply performing the

function of a committee of Congress to ascertain and report to Congress the law and the facts of the case with its views thereon, that Congress might the better judge whether the rules of international law in force at the time the ship *Rose* was captured by the French authorized her capture and condemnation.

"It is very plain, therefore, that when the claimants of the ship undertook to excuse their delinquency under the law of nations by an act of Congress the court had a ready answer; that in the controversy in the foreign prize court between the ship and her French captor the act of Congress had no relevancy whatever, as it could not possibly change the law of nations or afford any justification or excuse for the conduct of the ship which took place on the high seas, where the act of Congress could not operate.

"This proceeding, or case, if you please, took place under the act of Congress of January 20, 1885 (23 Stats. 283), which expressly says (Sec. 6): 'Such finding and report of the court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress.'

"In *Gordon v. The United States* (117 U.S., Appendix, 699) the Chief Justice comments on this advisory function of the Court of Claims and likens it to that of an auditor or comptroller, saying: 'The circumstance that one is called a court and its decisions called judgments can not alter its character nor enlarge its power.'

"But if Congress has power to establish tribunals that are at liberty to disregard the decisions of the courts that are the repositories of the judicial power of the Constitution, there is an end of the supposed coordination between the legislative and judicial departments of the government.

"Of course, a judgment may be attacked on jurisdictional grounds under all circumstances. Letters of

administration and of guardianship and judgments of naturalization, for example, may be denied extraterritorial effect, but they can never be collaterally assailed, as in this case, on a ground that admits jurisdiction in the authority from which they emanated. This follows from the unity and indivisibility of *status*, which, in the nature of things, can not be exposed to attack or aspersion save in the jurisdiction authorized to vacate the act by which the particular *status* was conferred. The law of nations has settled down on this principle with reference to judgments establishing *status*, whatever latitude that code may allow the courts of one country when called upon to enforce judgments of other kinds rendered in foreign countries—a subject much considered in the opinion of the majority, but which I shall not go into, as, in my view, the case does not require it.

“It is on the ground of the unity and indivisibility of *status* that the authority of a personal representative appointed by a competent court can not be questioned in any other court. But, if I understand the reasoning of the majority, the attack made on the judgment of naturalization would have been equally permissible if the petition here had been filed by the administrator of Ruiz, and the government had made defense on the ground that the letters of administration were obtained by petitioner’s false swearing. Indeed, a question based on this hypothesis was put to one of the learned counsel for the government during the argument, but it failed to elicit discussion.

“It is perfectly clear, therefore, that whether a judgment conferring *status* be limited in operation to a particular country, as letters of administration, or be without such restriction, as where permanent and universal, it must, from the principle of unity and indivisibility that inheres in it, be exempt from collateral attack or question of any kind.

"As to the decisions of international commissions, relied on in the majority opinion as upholding the position taken in this case with regard to the demurrer, I must decline to give them precedence over the opinions of jurists of world-wide authority, and especially so when I fail to discover in the decisions of those commissions evidence that the question now in hand was philosophically considered."

J. Crimes and Offenses against Naturalization Laws.

False Swearing.

Rev. Stat. Sec. 5395 [U. S. Comp. Stat. 1901, 3654]: "In all cases where any oath or affidavit is made or taken under or by virtue of any law relating to the naturalization of aliens, or in any proceedings under such laws, any person taking or making such oath or affidavit, who knowingly swears falsely, shall be punished by imprisonment not more than five years, nor less than one year, and by a fine of not more than one thousand dollars."

Sec. 23, Act of June 29, 1906: "Any person who . . . in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

False Personation, Forgery, Uttering, and Counterfeiting.

Rev. Stat. Sec. 5424 [U. S. Comp. Stat. 1901, 3668]: "Every person applying to be admitted a citizen, or appearing as a witness for any such person, who knowingly personates any other person than himself, or falsely appears in the name of a deceased person, or in an assumed or fictitious name, or falsely makes, forges, or counterfeits any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding

required or authorized by any law relating to or providing for the naturalization of aliens; or who utters, sells, disposes of, or uses as true or genuine, or for any unlawful purpose, any false, forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or sells or disposes of to any person other than the person for whom it was originally issued any certificate of citizenship, or certificate showing any person to be admitted a citizen—shall be punished by imprisonment at hard labor not less than one year, nor more than five years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.”

Sec. 16, Act of June 29, 1906: “Every person who falsely makes, forges, counterfeits, or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person convicted of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment.”

Use of forged or counterfeit certificate, etc.

Rev. Stat. 5425 (U.S. Comp. Stat. 1901, 3669): “Every person who uses, or attempts to use, or aids, or assists, or participates in the use of, any certificate of citizenship, knowing the same to be forged, or counterfeit, or antedated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or who, without lawful excuse, knowingly is possessed of any false, forged, antedated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization,

knowing such certificate to be false, forged, antedated, or counterfeit, with intent unlawfully to use the same; or obtains, accepts, or receives any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or antedated; and every person who has been or may be admitted to be a citizen who, on oath or by affidavit, knowingly denies that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, shall be imprisoned at hard labor not less than one year, nor more than five years, or be fined not less than three hundred dollars, nor more than one thousand dollars, or both such punishments may be imposed."

It has been held that this section does not render punishable the uttering of a forged certificate by a person other than the one applying for such certificate or appearing as a witness for the person so applying. *United States v. York*, 131 Fed. 323.

Rev. Stat. 5426 (U. S. Comp. Stat. 1901, 3669): "Every person who in any manner uses, for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment, or exemplification has been unlawfully issued or made; and every person who unlawfully uses, or attempts to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be punished by imprisonment at hard labor not less than one year nor more than five years, or by a fine of not less than three hundred nor more than one

thousand dollars, or by both such fine and imprisonment."

Sec. 17, Act of June 29, 1906: "Every person who engraves or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor, or other proper officer, and any person who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use such plate or suffer the same to be used in forging or counterfeiting any such certificate or any part thereof; and every person who prints, photographs, or in any other manner causes to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof, or who sells any such certificate, or brings the same into the United States from any foreign place, except by direction of some proper officer of the United States, or who has in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent to unlawfully use the same, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such fine and imprisonment."

Rev. Stat. 5427 (U. S. Comp. Stat. 1901, 3670): "Every person who knowingly and intentionally aids or abets any person in the commission of any felony denounced in sections 5424, 5425, and 5426, or attempts to do any act therein made felony, or counsels, advises, or procures, or attempts to procure, the commission thereof, shall be punished in the same manner and to the same extent as the principal party."

Rev. Stat. 5428 (U. S. Comp. Stat. 1901, 3670): "Every person who knowingly uses any certificate of naturalization heretofore granted by any court, or hereafter granted, which has been or may be procured through fraud or by false evidence, or has been or may be issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and every person who falsely represents himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be punishable by a fine of not more than one thousand dollars, or be imprisoned not more than two years, or both."

Rev. Stat. 5429 (U. S. Comp. Stat. 1001, 3670): "The provisions of the five preceding sections [i. e. R. S. 5424-5428] shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced."

Unlawful possession of blank certificate of citizenship.

Sec. 19, Act of June 29, 1906: "Every person who without lawful excuse is possessed of any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization, with intent unlawfully to use the same, shall be imprisoned at hard labor not more than five years or be fined not more than one thousand dollars."

Unlawfully procuring naturalization.

Sec. 23, Act of June 29, 1906: "Any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge

and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

2. By Clerks.

Act of June 29, 1906.

"Sec. 18. It is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this Act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court."

"Sec. 20. Any clerk or other officer of a court having power under this Act to naturalize aliens, who wilfully neglects to render true accounts of moneys received by him for naturalization proceedings or who wilfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both."

"Sec. 21. It shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment."

"Sec. 22. The clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this Act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this Act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years."

3. Limitation of Actions.

"Sec. 24. No person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act [June 29, 1906], unless the indictment is found or the information is filed within five years next after the commission of such crime."

Crimes Committed Prior to the Date When the Act of June 29, 1906, Went Into Effect.

Act of June 29, 1906: "Sec. 25. For the purpose of the prosecution of all crimes and offenses against the

naturalization laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization laws shall remain in full force and effect."

"Sec. 31. This act shall take effect and be in force from and after ninety days from the date of its passage: Provided that sections one, two, twenty-eight, and twenty-nine shall go into effect from and after the passage of this Act."

CHAPTER II.

NATURALIZATION BY NATURALIZATION OF PARENT.

- A. In general.
- B. Meaning of phrase "dwelling in the United States."
 - 1. Where the children are dwelling in United States at naturalization of parent.
 - 2. Where the children are dwelling abroad at naturalization of parent.
 - 3. Act of March 2, 1907.
- C. Mode of parent's naturalization immaterial.
 - a. By naturalization of father by treaty.
 - b. By naturalization of mother by marriage.
- D. Illegitimate children.
- E. Adoption.
- F. Effect of declaration of intention of parent during minority of child.
- G. Naturalization not effective internationally as to absent family.

NATURALIZATION BY NATURALIZATION OF PARENT.

A. In General.

The naturalization of an alien also confers citizenship upon his minor children dwelling in the United States.

Section 2172, Rev. Stat. (U. S. Comp. Stat. 1901, 1334), provides that "the children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof."

This is substantially the language of the Act of April 14, 1802 (2 Stat. at L. 153), which repealed the Act of January 29, 1795 (1 Stat. at L. 414), the wording of which was: "The children of persons duly naturalized, dwelling within the United States, and being under the age of twenty-one years, at the time of such naturalization, and

the children of citizens of the United States, born out of the limits and jurisdiction of the United States, shall be considered as citizens of the United States."

B. Meaning of Phrase " Dwelling in the United States."

The use of the qualifying phrase, " Dwelling in the United States," makes the meaning of the law somewhat uncertain. The difficulty is in determining at what period of time the child is required to be "dwelling in the United States" in order to acquire citizenship. The question can be most logically considered under the following division: (1) Where the children are dwelling in the United States at the time of the parent's naturalization; (2) where the children are dwelling abroad at the time of the parent's naturalization.

1. Where the Children Are Dwelling in the United States at the Time of the Parent's Naturalization.

The naturalization of an alien naturalizes his minor children born abroad but residing in the United States at the time of his naturalization. Children born abroad of aliens who subsequently emigrated to this country with their families, and were naturalized during the minority of their children, are citizens of the United States. 10 Ops. Atty. General, 329; *Gumm v. Hubbard*, 97 Mo. 311; 10 Am. St. Rep. 312; *State, ex rel. Carey v. Andriano*, 92 Mo. 70, 4 S. W. 263.

In the case of *West v. West*, 8 Paige Ch. 432, which arose in 1840, the facts were that a British subject who was twice married, each time to a native English woman, had three children born to him by the first wife and four children by the second. The first two children of his second marriage were born in England. In 1823, after the birth of the second child, he removed to New York with his wife and five children, where two more were born to him. In 1830, he was naturalized while his children were

all minors, residing with him. Upon his death, claim was asserted on behalf of the children born in this country to his entire estate on the ground that the children born in England were aliens and could not inherit. It was decided by the court that it was the intention of the law of 1802 "to embrace the children of those who should thereafter be, as well as those who had already been, duly naturalized under any of the laws of the United States;" that "all the children . . . were citizens of the United States at the time of his death, and his real estate descended to them in equal proportion as tenants in common."

In *State v. Penney*, 10 Ark. 621, it appeared that an alien came to the United States when his son was eleven years of age, and that the father was naturalized during the son's minority. The son was subsequently elected to the office of sheriff in Arkansas. *Quo warranto* proceedings were brought against him, upon the ground that at the time of his election he was not a citizen of the United States. The court held that he was naturalized by the naturalization of his father, and said that under the Act of 1802, the infant children of aliens, though born out of the United States, if dwelling within the United States at the time of the naturalization of their parents, became citizens by such naturalization.

In *State v. Andriano*, 92 Mo. 70, the court held that:

"The infant children of aliens, though born out of the United States, if dwelling within the United States at the time of the naturalization of their parents, became citizens by such naturalization, and the provisions of that act on this subject are prospective, and intended to embrace the children of those who should thereafter be, as well as those who had already been, duly naturalized under any of the laws of the United States."

The same conclusion was reached by the court in

O'Connor v. State, 9 Fla. 215, which involved the citizenship of a native of Bavaria, who came to the United States while a minor, with his father who took out naturalization papers during the son's minority. See, also, *North Noonday Mining Co. v. Orient Mining Co.*,⁶ Sawyer, 299.

2. Where the Children are Dwelling Abroad at the Time of the Parent's Naturalization.

The statute applies also to children who come to the United States after the father's naturalization, but before they reach majority.

In *Campbell v. Gordon*, 6 Cranch, 175, the facts were that a subject of Great Britain emigrated to the United States, leaving in Scotland a daughter who had been born there. In 1795 the father was naturalized in the United States, and in 1797, his daughter joined him in this country. The question of her citizenship being presented to the Supreme Court of the United States in 1809, the court said:

"The next question to be decided is whether the naturalization of William Currie conferred upon his daughter the rights of a citizen, after her coming to and residing within the United States, she having been a resident in a foreign country at the time when her father was naturalized?

"Whatever difficulty might exist as to the construction of the third section of the Act of the 29th of January, 1795, in relation to this point, it is conceived that the rights of citizenship were clearly conferred upon the female appellee by the fourth section of the Act of the 14th of April, 1802. This Act declares that the children of persons duly naturalized under any of the laws of the United States, being under the age of 21 years at the time of their parent's being so naturalized, shall, if dwelling in the United States, be considered as citizens of the

United States. This is precisely the case of Mrs. Gordon. Her father was duly naturalized, at which time she was an infant; but she came to the United States before the year 1802, and was *at the time when this law passed* dwelling within the United States.

"It is therefore the unanimous opinion of the court that at the time of the death of James Currie, Mrs. Gordon was entitled to all the right and privilege of a citizen."

While this decision has been cited as authority for the view that under the statute, children born abroad but who come to the United States and dwell here after the naturalization of the father and during their minority are citizens of the United States, what the court really decided was that the minor daughter of a person naturalized as a citizen of the United States became a citizen though not within the United States at the time of his naturalization, as she was dwelling here *at the time when the Act of 1802 was passed*.

The Supreme Court, in *Boyd v. Thayer*, 143 U. S. 135, declared that the Act of 1802 was intended to operate *prospectively as well as retrospectively*, and should not be limited to the children of those who had been naturalized *at the time of its passage*. See *U. S. v. Kellar*, 13 Fed. 82.

In *Young v. Peck*, 21 Wend. 389, and 26 Wend. 613, the facts were that a native of Scotland emigrated to the United States in 1774 and acquired citizenship here, not by formal naturalization, but by residence and election of American allegiance. He had a daughter who had been born in Scotland about 1770 and who remained there and married in that country. Her husband died and she came to the United States in 1830, when she was about sixty years old. Notwithstanding she was not "dwelling in the United States" either at the time of her father's naturalization, or at any time during her minority, and hence did not come within the description of "children"

in the statute, the Supreme Court of New York decided that she was a citizen of the United States, under the provisions of the Act of 1802. The court appears to have taken the view that the intent of the law was that such persons were to be considered as citizens *whenever* dwelling in the United States. It does not appear that there is legal basis for the opinion. Although the decision was affirmed on appeal, the decision of the superior court is no more satisfactory than that of the court below. It seems that the higher court based its decision that the daughter was a citizen upon the ground of the transfer of the allegiance by her father while she was a minor.

In *Ludlam v. Ludlam*, 31 Barb. 486, the court said that "Young v. Peck was decided in the Supreme Court upon the statute of 1802, and in the court of errors either upon the same ground or upon the effect of the Declaration of Independence and the treaty of peace upon persons domiciled and remaining here after the revolutionary war."

The phrase "dwelling in the United States" was construed by the Supreme Court of the United States in the interesting case of *Zartarian v. Billings*, decided January 7, 1907 (204 U. S. 170). Charles Zartarian, a Turkish subject, came to this country about the year 1880, leaving his wife and two children in Turkey. In 1896, he became naturalized in Chicago, and in 1904 sent passage-money for his wife and children to join him in this country. At the request of the American minister at Constantinople, the Turkish Government granted them permission to emigrate to the United States, it being stipulated in the passport that they could never return to Turkey. Upon their arrival at Boston, Zartarian's wife and son were admitted, but it being found that the daughter Mariam had trachoma, she was debarred from

landing, under the Immigration Act of March 3, 1903, 32 Stat. at L. 1213, which provides that aliens afflicted with a loathsome or dangerous contagious disease, shall be excluded from admission to the United States. She was detained in the immigration detention hospital at Boston, and the father, by writ of *habeas corpus* petitioned the United States Circuit Court for the District of Massachusetts, alleging that her restraint was in violation of her constitutional rights, without due process of law, and contrary to the provisions of Section 2172 of the Revised Statutes, which, it was claimed, made her a citizen of the United States, by virtue of the citizenship of her father. The circuit court having denied the petition, an appeal was taken to the Supreme Court of the United States. Mr. Justice Day, delivering the opinion of the court, after reciting the facts, said:

“The contention is that she does not come within the terms of this statute, not being an alien, but entitled to be considered a citizen of the United States, under the provisions of Section 2172 of the Revised Statutes, which provides: ‘The children of persons who have been duly naturalized under any law of the United States . . . being under the age of twenty-one years at the time of naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof.’

“As Mariam was born abroad, a native of Turkey, she has not become a citizen of the United States except upon compliance with the terms of the Act of Congress, for, wanting native birth, she can not otherwise become a citizen of the United States. Her right to citizenship, if any she has, is the creation of Congress, exercising the power over this subject conferred by the Constitution. *United States v. Wong Kim Ark*, 169 U. S. 649, 702.

“The relevant section, 2172, which it is maintained confers the right of citizenship, is the culmination of a

number of Acts on the subject passed by Congress from the earliest period of the government. Their history will be found in vol. 3, Moore's Int. Law Digest, 467.

"Section 2172 is practically the same as the Act of April 14, 1802, 2 Stat. 153, which provided:

"The children of persons duly naturalized under any of the laws of the United States . . . being under the age of 21 years at the time of their parents being so naturalized . . . shall, if dwelling in the United States, be considered as citizens of the United States, and the children of persons who are now or have been citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered citizens of the United States.'

"In *Campbell v. Gordon*, 6 Cranch, 176, it was held that this Act conferred citizenship upon the daughter of an alien naturalized under the Act of January 29, 1795, she being in this country at the time of the passage of the Act of April 14, 1802, and then 'dwelling in the United States.'

"The Act has also been held to be prospective in its operation and to include children of aliens naturalized after its passage, when 'dwelling in the United States.' *Boyd v. Thayer*, 143 U. S. 135, 177.

"The construction of this law and the meaning of the phrase 'dwelling in the United States' has been the subject of much consideration in the executive department of the government having to do with the admission of foreigners and the rights of alleged naturalized citizens of the United States. The rulings of the State Department are collected in Prof. Moore's Digest of International Law, vol. 3, 467 *et seq.*

"The Department seems to have followed a rule established at an early period, and formulated with fullness in Foreign Relations for 1890, 301, in an instruction from Mr. Blaine to Minister Phelps, at Berlin, in which it

was laid down that the naturalization of the father operates to confer the municipal right of citizenship upon the minor child if, at the time of the father's naturalization, dwelling within the jurisdiction of the United States, or if he come within that jurisdiction subsequent to the father's naturalization and during his own minority.

"Whether, in the latter case, a child not within the jurisdiction of the United States at the time of the parents' naturalization, but coming therein during minority, acquires citizenship is not a question now before us.

"The limitation to children 'dwelling in the United States' was doubtless inserted in recognition of the principle that citizenship can not be conferred by the United States on the citizens of another country when under such foreign jurisdiction; and is also in deference to the right of independent sovereignties to fix the allegiance of those born within their dominions, having regard to the principle of the common law which permits a sovereignty to claim, with certain exceptions, the citizenship of those born within its territory.

"It is pointed out by Mr. Justice Gray, delivering the opinion in *United States v. Wong Kim Ark*, 169 U. S. 649, 686, that the naturalization acts of the United States have been careful to limit admission to citizenship to those 'within the limits and under the jurisdiction of the United States.'

"The right of aliens to acquire citizenship is purely statutory; and the petitioner's child having been born and remained abroad, clearly does not come within the terms of the statute. She was debarred from entering the United States by the action of the authorized officials, and, never having legally landed, of course could not have dwelt within the United States. *Nishimura Ekiu v. United States*, 142 U. S. 651.

"It is urged that this seems a harsh application of the

law, but if the terms of the statute are to be extended to include children of a naturalized citizen who have never dwelt in the United States, such action must come from legislation of Congress and not judicial decision. Congress has made provision concerning an alien's wife or minor child suffering from contagious disease, when such alien has made a declaration of his intention to become a citizen, and when such disease was contracted on board the ship in which they came, holding them under regulations of the Secretary of the Treasury until it shall be determined whether the disorder will be easily curable, or whether such wife or child can be permitted to land without danger to other persons, requiring that they shall not be deported until such facts are ascertained, 37 Stat. 1221, U. S. Comp. Stat. 1901, Supp. of 1903, 185. But Congress has not said that an alien child who has never dwelt in the United States, coming to join a naturalized parent, may land when afflicted with a dangerous contagious disease.

"As this subject is entirely within Congressional control, the matter must rest there; it is only for the courts to apply the law as they find it.

"It is suggested that the agreed finding of facts contains no stipulation as to the dangerous or contagious quality of trachoma, but the petition shows that the petitioner's daughter was debarred from landing because it was found that she had a dangerous contagious disease, to wit, trachoma. Furthermore, the statute makes the finding of the board of inquiry final, so far as review by the courts is concerned, the only appeal being to certain officers of the department. 32 Stat. 1213; *Nishimura Ekiu v. United States*, 142 U. S. 651."

The order of the Circuit Court was affirmed, and orders for the deportation of the young woman were issued. As she was precluded from returning to her native land, she

was "a woman without a country," and it seemed improbable that she would be allowed to enter any civilized country. Fortunately, just at this juncture, the doctors at the hospital pronounced her cured, the Department of Commerce and Labor issued an order for her release, and she was allowed to join her parents.

The instruction of Mr. Blaine, to which the court referred was prepared by John Bassett Moore, than whom there is no higher authority on such questions in the United States, and it related to the case of Carl Heisinger. Because of the importance of the instruction, it is quoted in full:

"Mrs. Heisinger was born in Altona, Prussia. Her husband was also an alien by birth and came to the United States in May, 1866. He was naturalized August 18, 1871, and died probably not later than 1879. The son Carl was born in Philadelphia, in the State of Pennsylvania, Jan. 21, 1871, more than six months before the naturalization of his father. In 1879 Mrs. Heisinger returned to Germany, taking her son with her, and has ever since resided in that country. . . . It is a reasonable interpretation that the words, 'if dwelling in the United States' were intended, among other things, to meet the cases of conflicting claims of allegiance. In this relation it is pertinent to disclose the origin of those words. On March 26, 1790, an act was approved, entitled 'An Act to establish an uniform rule of naturalization.' 1 Stats. at Large, 103. This was the first law enacted by Congress on that subject. The first clauses prescribe the conditions and methods of naturalization. Then followed these words: 'And the children of such persons so naturalized, dwelling within the United States, being under the age of 21 years at the time of such naturalization, shall also be considered as citizens of the United States.' In 1795 the law of 1790 was repealed

by an Act of the 29th of January of the former year entitled 'An Act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject.' 1 Stats. at Large, 414. By the third section of the Act of January 29, 1795, it was provided that:

"The children of persons duly naturalized, dwelling within the United States and being under the age of 21 years at the time of such naturalization, and the children of citizens of the United States born out of the limits and jurisdiction of the United States shall, if dwelling in the United States, be considered citizens thereof.'

"It will be observed that in this provision, which is incorporated in section 2172 of the Revised Statutes, the words 'if dwelling in the United States' are transposed. The effect of this transposition was considered by the Supreme Court of the United States in the case of *Campbell v. Gordon* (6 Cranch, 176), in 1810. The case involved a title to land, which depended upon the citizenship of one Yanetta Gordon, nee Currie, who was by birth a British subject. Her father, also a natural-born British subject, emigrated to the United States, and in 1795 was naturalized. His daughter Yanetta was then residing in Scotland, where she remained until 1797, in which year she came to the United States. It was contended by counsel that she was not a citizen of the United States, inasmuch as she was not dwelling in the United States at the time of her father's naturalization. The Supreme Court took a different view of the matter. Mr. Justice Washington, delivering the opinion of the court, said: 'The next question to be decided is whether the naturalization of William Currie conferred upon his daughter the rights of a citizen after her coming to and residing within the United States, she having been a resident in a foreign country at the time when her father was naturalized. Whatever difficulty might exist as to

the construction of the third section of the Act of January 29, 1795, in relation to this point, it is conceived that the rights of citizenship were clearly conferred upon the female appellee by the fourth section of the Act of April 14, 1802. This Act declares that the children of persons duly naturalized under any of the laws of the United States, being under the age of 21 years at the time of their parents being so naturalized, shall, if dwelling in the United States, be considered as citizens of the United States. This is precisely the case of Mrs. Gordon.'

"The effect of the law, as thus expounded, is to make actual residence in the United States, and not residence at the time of naturalization, the test of the claim to citizenship; and here as explanatory of this rule, it is important to observe the associated provision, found in all the acts above quoted, and incorporated in the same relation in Section 2172 of the Revised Statutes, that children born of citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof. Under this provision, such children are treated as citizens thereof, whether dwelling in the United States or not, being regarded as citizens of the United States by birth. The preceding provision relates to children born of parents who were not at the time citizens of the United States and upon whom the country of the parents, under the same rule of law as that announced by this Government, might have claims of allegiance. In respect to such persons, the words 'if dwelling in the United States' recognize another principle, and that is that it is not within the power of a parent to eradicate the original nationality of his child, though he may, during the minority of such child, invest him with rights or subject him to duties which may or may not be claimed or performed. For this reason, also,

it is provided that children not born citizens of the United States are, by virtue of naturalization of the parents, to be considered as citizens of the United States 'if dwelling' therein.

"The Department does not desire to be understood to assert that natural-born subjects of a foreign power whose parents have been naturalized in the United States must at every moment be dwelling in the United States in order to claim its citizenship. That question does not arise in the present case. The words 'if dwelling in the United States,' whether meaning residence at a particular moment or contemplating a settled abode, apply to Carl Heisinger, who, being now 19 years of age, has for about 11 years been dwelling in Germany. It is not known that the government of that country has made any claims upon him. But, if the German government should, under a provision of law similar to that in force in the United States in relation to the foreign-born children of citizens, seek to exact from him the performance of obligations as a natural-born subject, the Department would be bound to consider the provisions of Section 2172 of the Revised Statutes." Mr. Blaine to Mr. Phelps, Feb. 1, 1890, For. Rel. 1890, 301.

A boy of 18 years, who has never been out of Germany, but whose father is a naturalized citizen of and resident in the United States, is not entitled to obtain the intervention of this government to secure him from military service in Germany, or to relieve him from being detained in Germany for that purpose. Mr. Evarts to Mr. Caldwell, Mch. 6, 1880; 3 Moore's Int. Law Digest, 464.

"The laws of the United States on the subject of naturalization provide, in relation to persons situated as your sons are, 'that the children of persons duly naturalized under any of the laws of the United States, . . . being under the age of 21 years at the time of their parents being so naturalized or admitted to the rights of

citizenship, shall, if dwelling in the United States, be considered as citizens of the United States.' Assuming that your three sons were born in France, accompanied you to this country, and have continued to reside here, they, together with your son born here, are, under the provision just cited, to be considered when dwelling in the United States, citizens of the United States, with all the rights and privileges attaching to that character, and entitled to the protection which this government extends to all its citizens in the exercise and enjoyment of these rights." Mr. Fish to Mr. Jouffret, Feb. 11, 1874; 3 Moore's Int. Law Digest, 465.

Robert Emden was born in Switzerland in 1862. His father, a native of Switzerland, was naturalized in the United States in 1854, but soon afterwards returned to Switzerland, where he ever afterwards continued to reside. In 1885 the son, who had never been in the United States, applied to the American legation at Berne for a passport. Secretary Bayard held: "The passport application of Mr. Robert Emden, although he is the son of a naturalized American, can not be granted, because he is not, and never has been, 'dwelling in the United States,' according to Section 2172 of the Revised Statutes. 3 Moore's Int. Law Digest, 466.

A native of Germany was taken in infancy to the United States. Her father, who was a German, died soon after his emigration, and his widow married his brother, who was a naturalized citizen of the United States. Subsequently, when she was 24 years of age, having lived nearly all her life in the United States, she went to Germany, temporarily, to study music. She applied soon afterwards to the embassy for a passport, which was granted. The action of the embassy was approved by the Department of State. Mr. Adey, Acting Secretary, to Mr. Runyon, 3 Moore's Int. Law Digest, 466.

J. W. claimed American citizenship through the

naturalization of his father. The latter was born in the Crimea in 1836, came to the United States in 1875, and was naturalized in 1881. Three months later he returned to Russia, where he continued to reside, following the occupation of a farmer. J. W. was born in Russia and returned to that country with his father in 1881, being then 19 years of age, and afterwards resided there, also following the occupation of a farmer. In 1891, being then 28 years of age, he applied to the American legation at St. Petersburg for a passport. He expressed no intention as to returning to the United States. Mr. Blaine declared that it would not have availed him if he had. Under Section 2172, Revised Statutes, said the Department, the children of persons who have been duly naturalized, being under the age of 21 years at the time of their parents' naturalization, are, "if dwelling in the United States," to be considered as citizens thereof. J. W., said the Department, "never has dwelt here since attaining his majority, and is not dwelling here now. He is therefore precluded by the statute from claiming the benefits of citizenship of the United States." 3 Moore's Int. Law Digest, 469.

In the case of Henry Huber and family and Frederick Huber and family, who, in 1881, applied to our legation in Vienna for passports, the facts were as follows: Henry Huber was born in Switzerland in 1823, married there in 1846, and had five children born in that country. He came to the United States with his family in 1854, was naturalized in 1859, and returned with his family to Europe in 1860. His eldest son, Heinrich Huber, returned to this country in 1864, and continued to reside here. His son Frederick married an Austrian subject in Austria in 1876. The latter stated that he intended "in course of time" "to return to America." Minister Kasson granted a passport to Henry Huber, accompanied by his wife and infant child. In reporting the matter to the Department,

he said: "My difficulty in arriving at a satisfactory decision in these cases arises from the language of our statute. . . . Sec. 2172 (U. S. Comp. Stat. 1901, 1334) intends minors living with their parents at the time of naturalization, but employs as to these the dubious expression 'shall, if dwelling in the United States, be considered as citizens thereof.' Does that mean that our laws make them citizens by virtue of the father's naturalization while they are minors living with him? Or does it mean that the law considers them to be citizens only during their residence in the United States, and withholds protection from them outside of the domestic jurisdiction? Or that they are not to be considered our citizens at all, anywhere beyond their minority? Are they thrown back, on arriving in Europe, upon their born allegiance?" Secretary Blaine approved Mr. Kasson's action, and said in reply: "This Department has always held the provisions of Sec. 2172, Rev. Stat. (U. S. Comp. Stat. 1901, 1334), as applicable to such children as were actually residing in the United States at the time of their fathers' naturalization, and to minor children who came to the United States during their minority and while the parents were residing here in the character of citizens. This view appears to be in consonance with the traditional policy of the government on the subject of citizenship." Mr. Blaine to Mr. Kasson, March 31, 1881, For. Rel. 1881, 53.

In a despatch dated October 13, 1884, Mr. Kasson inquired: "Does the phrase, 'if dwelling in the United States'—Rev. Stat. Sec. 2172 (U. S. Comp. Stat. 1901, 1334)—refer to the date of naturalization, or to the duration of residence within the United States, and excluding a foreign residence? In other words, which of these readings is correct: 'Sec. 2172 (U. S. Comp. Stat. 1901, 1334). The children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the

time of the naturalization of their parents, shall, if [at the time] dwelling in the United States [or while dwelling in the United States] be considered as citizens thereof.' The former construction would allow a young man to join his father in the United States a week before his naturalization, and return to his native land a week after, a full-fledged American citizen, while still in his minority, and without renunciation of old allegiance or swearing to the new." For. Rel. 1884, 202.

In reply, Secretary Frelinghuysen stated that Mr. Kasson's query was hypothetical, and that no such case had, so far as he knew, been presented for the decision of the Executive or the courts of the United States. He said, however, that in the light of Rev. Stat., Sec. 1999 (U. S. Comp. Stat. 1901, 1269), declaring any decision of any officer of the government tending to restrict the right of expatriation to be inconsistent with the fundamental principles of the Republic, and of Sec. 2000 (U. S. Comp. Stat. 1901, 1270), declaring that all naturalized citizens of the United States while in foreign countries are entitled to receive from this government the same protection which is accorded to native-born citizens, it was difficult to see how any branch of the government could well maintain that the children of persons duly naturalized in the United States, and therefore also citizens by law, should lose that status by the mere act of passing beyond the territorial jurisdiction of the United States, especially if they passed within the limits of a third state not of the original allegiance, which could under no circumstances lay claim to their subjection. "It can be seen," said he, "how such an interpretation might regard a citizen of the United States as a citizen of no country whatever, through the sole fact of setting foot outside of our territory, and how, by again setting foot within our borders, his right of citizenship might be deemed to revive unimpaired."

Referring to Mr. Kasson's remark that the construction of the phrase as meaning that the minor children who become citizens through the naturalization of the father must be, at the time of the father's naturalization, dwelling in the United States, would allow a young man to join his father in the United States a week before his naturalization, and return to his native land a week after, a full-fledged American citizen, Secretary Frelinghuysen said: "That such a thing is possible is a defect in our existing naturalization laws." For. Rel. 1885, 395, 396; Van Dyne, *Citizenship of the United States*, 111, 112.

Jacob Lenzen, Jr., was born in Germany in 1881, and in 1882 was taken by his father to the United States, where he lived until August, 1898, when he went to Germany with the intention of remaining two or three years. His father was naturalized September 13, 1898—after young Lenzen had left the United States. Lenzen applied for a passport, to the United States embassy at Berlin. Upon the request of the embassy for instructions, Secretary Hay said: "The words 'dwelling in the United States,' in Rev. Stat., Sec. 2172 (U. S. Comp. Stat. 1901, 1334), have been held by the Department to mean either at the time of the father's naturalization or afterwards during the child's minority."

After quoting Mr. Blaine's instruction to Mr. Kasson, *supra*, he added: "Taking this view, young Lenzen, who was not dwelling in the United States at the time of his father's naturalization, and has not dwelt here since, is not a citizen of the United States. Should he come to the United States and dwell here during his minority he would, however, be entitled to claim citizenship under the statute." Mr. Hay to Mr. White, October 15, 1898, MSS. Inst. to Germany; Id. August 18, 1898.

It is sufficient, therefore, it seems, if the children are "dwelling in the United States" at the time of the

naturalization of their parents, or at any subsequent period during their minority.

The naturalization of an alien, after his son, born out of the United States, has become of age, does not make the latter a citizen. *Boyd v. Nebraska*, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375.

Naturalization of the parent in the United States does not confer citizenship on his minor children born abroad before that event, and continuing to reside and attain their majority abroad. Mr. Foster to Mr. Lincoln, August 10, 1892, MSS. Inst. to Gt. Brit., For. Rel. 1892, 233. See, also, Mr. Frelinghuysen to Mr. Brulatour, July 30, 1883, For. Rel. 1883, 274.

If the children remain abroad until they reach majority, they can not acquire citizenship through their parents' naturalization. In the case of Frank Fred Nicklas, the father emigrated to the United States from Germany in 1869, and was naturalized here in 1884. In 1885 he sent for his son, aged seventeen, to join him in this country. The son was arrested just before he started, was confined in jail for a couple of weeks, and was then brought before a court of justice and discharged. The father requested the intervention of this government in the son's behalf. Secretary Bayard said: "If, as is understood from your statement, the son, Frank Fred Nicklas, did not emigrate with his father to America, was not residing in America when his father was naturalized here in 1884, and has not at any time since been a resident of the United States, he can not be considered a United States citizen. Our laws require that the children of persons who have been naturalized here must be 'dwelling in the United States' to be considered citizens thereof." Mr. Bayard to Mr. Cole, November 9, 1885, MSS. Dom. Let.

And upon the application of Mr. Charles Drevet for a passport, it appeared that he was born, in 1864, in Paris, where he had always resided. His father, a Frenchman,

came to the United States in 1852; in 1858 he declared his intention to become an American citizen; in 1859 he married an American lady; in 1860 he went back to France; in 1869 he returned to America; in the same year he took out his second papers, and shortly after resumed his residence in France, where he continued to live. The son had always lived in France; the father had been domiciled there for many years; neither the son nor the father had expressed any intention of residing in the United States at any time in the future. The department held that, under Rev. Stat. Sec. 2172 (U. S. Comp. Stat. 1901, 1334), as Charles Drevet was not, at the time of the naturalization of his father, dwelling in the United States; as he had never resided in this country, and never intended to do so, he could not be considered an American citizen. Mr. Bayard to Mr. McLane, July 2, 1885, MSS. Inst. to France, For. Rel. 1885, 373; 2 Wharton's Int. Law Digest, 410.

Section 2172, Rev. Stat. (U. S. Comp. Stat. 1901, 1334), only confers citizenship upon minors dwelling in the United States; and the Department holds that the prescribed minority residence in this country must have coincided with, or been subsequent to, the parent's admission to citizenship. Mr. Hay to Mr. Harris, April 1, 1899, MSS. Inst. to Austria.

Anton Macek was born in Vienna of Austrian parents August 13, 1875. In May, 1884, his father emigrated to the United States with his entire family and had resided in Chicago ever since. Before his naturalization and while the son Anton was yet a minor, August 16, 1894, his father sent him to Austria to be educated. The father was naturalized in Chicago October 22, 1894—that is, subsequent to the return of the son Anton to Austria, where he had since remained. Upon application for a passport it was held that Anton Macek was not entitled to claim citizenship in the United States for the reason that “he was not dwelling in the United States at

the time of his father's naturalization, he has not at any time since dwelt in the United States, and of course is not now dwelling here."

In this case the view was advanced that the words of the statute, "dwelling in the United States," refer to the legal residence of a minor; that although at the time of the naturalization of the father Anton Macek was not actually within the jurisdiction of the United States, his legal residence was with the parent, and that he might be held to have been vicariously present in the person of his father, through whom he became a citizen of the United States, the same as though he had been personally present at the father's home in Chicago. The Department said that "the principle may be broadly stated that no country can naturalize an inhabitant of another country while that person is dwelling within the jurisdiction of the other country." Mr. Hay to Mr. Harris, January 22, 1900, For. Rel. 1900, 13.

And in answering the same contention advanced in the case of Miss Meta Schwartz in 1902, Secretary Hay said: "The law (Rev. Stat. Sec. 2172 [U. S. Comp. Stat. 1901, 1334]) is anomalous enough in permitting the minor son of an alien to come to the United States immediately before his father's naturalization here, and to leave this country a full-fledged citizen the day after such naturalization. To construe the statute as conferring citizenship upon a minor who is not in the United States at the time of the father's naturalization, nor subsequently, would be to needlessly open the door to further abuses of our citizenship." Mr. Hay to Mr. Hardy, July 15, 1902, MSS. Inst. to Switzerland. See, also, the case of Antonio Basile, For. Rel. 1902, 685.

3. Act of March 2, 1907.

In order that there might be no further doubt as to the meaning of the phrase "dwelling in the United States," Congress, in pursuance of the recommendation

of the Citizenship Commission of 1906, designated by the Secretary of State pursuant to the request of the House Committee on Foreign Affairs (Report No. 4784, 59th Congress, 1st Session), enacted the law of March 2, 1907, Section 5 of which provides "that a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, That such naturalization or resumption takes place during the minority of such child: *And provided, further*, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States."

By the terms of this law, naturalization of the parent confers citizenship on the foreign-born minor child if the latter is permanently residing in this country at the time of the parent's naturalization, or subsequently to such naturalization, during the minority of the child. This would preclude the naturalization of the son of a naturalized citizen, coming to the United States temporarily just before reaching majority and going at once back to his native country, with the design of escaping military or other obligations there. See pp. 213-15, ante.

By this statute, resumption of American citizenship has the same effect as naturalization upon the status of the minor child. It is understood that this provision was designed to meet the case of the foreign-born minor child of an American woman who, after the termination of her marriage with a foreigner, resumes American citizenship, in accordance with the provisions of Section 3 of the same Act.

Under this statute, such decisions as *Campbell v. Gordon* and *Young v. Peck*, would be impossible.

To give further effect to this provision, the President, by Executive Order of April 6, 1907,* amended para-

*For the full text of this order see Appendix.

graph 142 of the Instructions to Diplomatic Officers and of the Consular Regulations so as to read as follows:

“Paragraph 142. Children of Naturalized Citizens.—The naturalization or resumption of American citizenship of the parents confers American citizenship upon the minor children and such citizenship shall begin at the time such minor children begin to reside permanently in the United States.”

C. Mode of Parent's Naturalization Immaterial.

The language of the statute is: “The children of persons who have been duly naturalized under any law of the United States,” etc. It does not matter in what lawful mode the naturalization of the parent is effected.

a. By Naturalization of Father by Treaty.

A treaty is just as much a law of the United States as an Act of Congress. Hence, it was decided, in the case of *Crane v. Reeder*, 25 Mich. 303, that the minor child of one who became a citizen under Article 2 of Jay's Treaty, if residing in the United States at the time, thereby became a citizen of the United States.

b. By Naturalization of Mother by Marriage.

In *United States v. Kellar*, 11 Biss. 314, where a resident alien woman married a naturalized citizen of the United States, it was held that her 9-year-old son, dwelling with her, became a citizen, by virtue of the provisions of Sec. 2172 Rev. Stat. The mother became “duly naturalized” by her marriage to an American citizen, under Sec. 1994, Rev. Stat. (U. S. Comp. Stat. 1901, 1268), which will form the subject of the next chapter. The court said: “The marriage of the defendant's mother with a naturalized citizen was made, by the statute, an equivalent, in respect of citizenship, to formal naturalization under the Acts of Congress. Thenceforward she was to be regarded as having been duly naturalized under

the laws of this country, and her infant son, then dwelling in this country, was therefore to be considered, not an alien, but as a citizen." See, also, *People v. Newell*, 38 Hun 78; *Gumm v. Hubbard*, 97 Mo. 311, 10 Am. St. Rep. 312, 11 S. W. 61, and *Kreitz v. Behrensmeyer*, 125 Ill. 141, 8 Am. St. Rep. 349, 17 N. E. 232, For. Rel. 1900, 527.

In the last case, two children born in Canada of British parents were brought to the United States upon the death of their father; and the mother married an American citizen. Upon an application for a passport, Secretary Hay said: "Under our law the two persons referred to are citizens of the United States. By her second marriage the mother acquired American citizenship by virtue of the provisions of Sec. 1994 of the Revised Statutes of the United States (U. S. Comp. Stat. 1901, 1268), which reads as follows: 'Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.' Rev. Stat. Sec. 2172 (U. S. Comp. Stat. 1901, 1334), declares that 'the children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof.' Any possible question whether, by the marriage of the mother, she became duly naturalized is set at rest by the decision of the United States Circuit Court in the case of the *United States v. Kellar*, 11 Biss. 314, 13 Fed. 82, in which the court held that the mother, an alien, by her marriage to a naturalized citizen of the United States, became 'duly naturalized.' . . . In the opinion of the Department the persons referred to . . . are entitled to passports as citizens of the United States." For. Rel. 1900, 527.

The minor son of an alien, who has been naturalized under Rev. Stat. Sec. 2172 (U. S. Comp. Stat. 1901, 1334), by the naturalization of his father in the United States, has "become a naturalized citizen of the United States," within the meaning of the naturalization treaty between the United States and Württemberg (6 Stat. at L. 735). Actg. Secy. Adee to Mr. White, July 15, 1902, MSS. Inst. Germany.

The language of the statute is: "The children of '*persons*' duly naturalized . . . shall be considered as citizens of the United States." Under this section, the naturalization of an alien *woman*, a widow, confers citizenship on her minor son. *Brown v. Shilling*, 9 Md. 74.

In *Kreitz v. Behrensmeyer*, 125 Ill. 141, where a widow, an alien woman, had married a citizen of the United States, the court said: "The children of such a woman, under the age of 21 years, become citizens by virtue of her citizenship."

The same court, in *Dale v. Irwin*, 78 Ill. 170, which involved the question of the citizenship of an illegitimate child, whose mother married his reputed father, and the latter was afterwards naturalized, said: "His (the son's) case is a peculiar one, and though he may be illegitimate, he came to this country as a member of John Ruckle's family, whose wife was his mother and who was naturalized whilst the son was an infant. John Ruckle is his reputed father, and the husband of his mother. We are inclined to hold, as he was a member of his reputed father's family when his father was naturalized, and he an infant, that, by virtue of the Act of Congress, he became naturalized."

In *United States v. Rodgers*, 144 Fed. 711, it was held that a minor residing in the United States with his

mother and stepfather became a citizen when the latter was naturalized.

D. Illegitimate Children.

Where the reputed father of an illegitimate child married the mother and was subsequently naturalized, it was decided that the child became a citizen of the United States. *Dale v. Irwin*, 78 Ill. 170; *Van Dyne*, Citizenship of the United States, 118.

Opinions of Secretaries of State.—A bastard who is legitimated by the intermarriage of his natural father and mother, the mother being an alien and the father a citizen, becomes a citizen of the United States by virtue of the provisions of Sec. 2172 of the Revised Statutes. *Mr. Hay to Mr. White*, Mch. 3, 1899, *Van Dyne*, Citizenship of the United States, 118.

E. Adoption.

Citizenship can not be conferred upon an alien child by adoption. The naturalization laws of the United States contain no provision as to the effect of adoption by an American citizen on the status of an alien minor.

Opinions of Secretaries of State.—A citizen of the United States can not, by adopting a child of foreign nationality, confer on such child the privileges of citizenship in the United States. *Mr. Fish to Mr. Rand*, Jan. 6, 1872, 3 *Moore's Int. Law Digest*, 484.

The only mode of adoption by which a private person can confer citizenship upon an alien is that of marrying a female of foreign birth. *Mr. Fish to Mr. Morris*, Feb. 26, 1870, 3 *Moore's Int. Law Digest*, 484.

Secretary Frelinghuysen in 1884 expressed the view that a child born abroad of foreign parents is not, by an act of adoption under a state law, brought within any of

the provisions of the laws of the United States prescribing United States citizenship. Mr. Frelinghuysen to Mr. Willis, Feb. 21, 1884, 3 Moore's Int. Law Digest, 485.

Secretary Bayard in 1886 declined to grant a passport to a Chinese woman who had been adopted in China by an American citizen and who desired to go to Japan as a medical missionary in the service of an American missionary society. Mr. Bayard to Mr. McCartee, Oct. 15, 1886, 3 Moore's Int. Law Digest, 485.

F. Effect of Declaration of Intention of Parent during Minority of Child.

Under this statute, citizenship is not conferred on a minor child by the declaration of intention of the parent to become a citizen of the United States. To effect naturalization of the child, the father must take out final naturalization papers during the minority of the child. *Berry v. Hull*, 6 N. Mex. 643; *In re Conway*, 17 Wis. 526; *In re Moses*, 83 Fed. 995; *Dorsey v. Brigham*, 177 Ill. 250.

Opinion of Secretary of State.—It does not suffice that the child was a minor when the parent's declaration of intention was made; he must have been a minor when the naturalization was completed. Mr. Cass to Mr. Medill, June 14, 1859, 3 Moore's Int. Law Digest, 464.

G. Naturalization Not Effective Internationally as to Absent Children.

A native of the canton of Vaud, who had been naturalized in the United States, invoked the intervention of the United States in order to secure the removal of his children to the United States. It appeared that by the proceedings in his native country, which took place prior to his change of allegiance, he was divorced from his wife, and the custody of the children was assigned to her. He had demanded their custody from the authorities of the

canton of Vaud, but without effect. The Department of State said: "The fact of your having become a citizen of the United States has the effect of entitling you to the same protection from this Government that a native citizen would receive; but it can not operate to destroy or to weaken in any way the authority of the canton of Vaud over its native-born citizens who have never been out of its jurisdiction, nor the exclusive rights of the tribunals, to whom the administration of its law is committed, to decide all questions which may arise between such citizens."

Mr. Buchanan to Mr. Rosset, Nov. 25, 1845, 3 Moore's Int. Law Digest, 487.

"As the question as to the right of your daughter, who is a minor, to leave her native country for the purpose of joining you in the United States, appears to be one over which the authorities of the former have exclusive jurisdiction, and as these have decided against that right it is conceived that there is no occasion for the interference of this Department in the matter."

Mr. Trescot, Assist. Sec. of State, to Mr. Capelle, June 18, 1860, 3 Moore's Int. Law Digest, 487.

"I have to acknowledge the receipt of your letter of the 21st ultimo in relation to the impediment interposed to the embarkation from Italy of the wife and children of Mr. Dominick Valon, a native of that kingdom, now a naturalized citizen of the United States. It may be open to question whether the Act of Congress of Feb. 10, 1855, declaring to be a citizen any woman who might be lawfully naturalized and who has married a citizen of the United States, can be deemed to have operated upon a woman who has never been within the jurisdiction of this government. This doubt renders it inexpedient to issue a passport to the lady in question, as the law requires that passports be issued only to citizens of the United States. The facts of the case will, however,

be communicated to our consul at Naples with instructions to use his good offices to procure the withdrawal by the state authorities of all obstacles to the emigration of Mrs. Valon and her children."

Mr. Seward, Secretary of State, to Mr. Tinelli, April 1, 1868, 3 Moore's Int. Law Digest, 485.

"While the general rule is that the wife and minor children share the fortunes of the husband and father, it is necessary that they should in fact partake of his change of domicil and allegiance and it has been held that the naturalization of an alien in the United States does not require this government to regard as American citizens those members of his household who have never been within the jurisdiction of the United States, but have remained in the land of their original allegiance."

Mr. Rives, Assistant Secretary of State, to Mr. Smith, December 13, 1888, 3 Moore's Int. Law Digest, 486.

CHAPTER III.

NATURALIZATION BY MARRIAGE.

- A. In general.
- B. Women who may be naturalized by marriage.
- C. Time of marriage.
- D. Necessity of residence in United States.
 - a. Residence in United States held not to be necessary.
 - b. Residence in United States held to be necessary.
- E. Nature of citizenship acquired.
- F. Effect of death of husband on citizenship of alien woman married to an American.
 - Instructions of the Department of State.
- G. Citizenship of American woman married to alien.
 - a. Under law prior to 1907.
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 - Instructions of the Department of State.
- H. Case of Nellie Grant Sartoris.
- I. Effect of divorce.
- J. Declaration of intention of husband.

NATURALIZATION BY MARRIAGE.

A. In General.

Before the passage of the Act of February 10, 1855 (10 Stat. at L. 604, Rev. Stat. Sec. 1994, U.S. Comp. Stat. 1901, 1268), marriage had no effect upon the citizenship of a woman; under our laws an alien woman marrying a citizen remained an alien still. This was in virtue of the common-law doctrine that no person can by any act of his own, without the consent of the government, put off his allegiance and become an alien. The leading case on this point is *Shanks v. Dupont*, 3 Peters, 242, 7 L. ed. 666.

In this case, a woman who had been born in this country before the Revolution, lived here until after reaching majority, and while the war was still in progress was married to an officer of the British army. Later, the couple removed to England, where she resided until her death. The Supreme Court decided that her marriage did not effect a change of allegiance, as "marriage with an

alien . . . produces no dissolution of the native allegiance of the wife. It may change her civil rights, but it does not affect her political rights or privileges. The general doctrine is that no person can, by any act of their own, without the consent of the government, put off their allegiance and become aliens. If it were otherwise, then a feme alien would, by her marriage, become *ipso facto*, a citizen, and would be dowable of the estate of her husband, which is clearly contrary to law. . . . Our conclusion, therefore, is that neither of these acts warrant the court in saying that Ann Shanks had ceased to be a citizen of South Carolina at the death of her father."

In the case of *Beck v. McGillis*, 9 Barb. 35, the facts were that a native American citizen, married, in Canada, a British subject, where they remained and had children born to them. In passing upon the rights of the wife and children to take under a will, the court said: "Mrs. McGillis was born a citizen of the United States. While a minor she intermarried with a subject of Great Britain, but neither her marriage nor her residence in a foreign country constitutes her an alien. Whether, indeed, a citizen can, by any mere act of his own, dissolve his native allegiance and become an alien is not definitively settled in this country. The question has been regarded as one of much difficulty as well as delicacy, and though frequently discussed before the Supreme Court of the United States, it has never, I believe, been regarded as the leading point in the case presented, so as to call for the judgment of the court. But it has been decided by that court that the marriage of a feme sole with an alien husband does not produce a dissolution of her native allegiance."

The British Act of Parliament of 1844 (7 & 8 Vict. 154, Chap. 66) declared that "any woman married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed and taken to be herself

naturalized, and have all the rights and privileges of a natural-born subject."

The American law is based on the British act.

Section 2 of the Act of February 10, 1855, reads as follows: "Any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen" of the United States.

The language of the law as incorporated in the Revised Statutes of the United States, Section 1994 (U. S. Comp. Stat. 1901, 1268), is as follows: "Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

The power of Congress to enact a uniform rule of naturalization throughout the United States authorizes the provision of Rev. Stat., Section 1994 (U. S. Comp. Stat. 1901, 1268), that the marriage of an alien woman with a citizen makes her a citizen. *Dorsey v. Brigham*, 177 Ill. 250, 42 L. R. A. 809, 69 Am. St. Rep. 228, 52 N. E. 303.

Any woman capable of naturalization under our laws, who is married to a citizen of the United States, is to be deemed a citizen.

B. Women Who May be Naturalized by Marriage.

What women may be naturalized? What is the meaning of the clause, "who might herself be lawfully naturalized?"

In *Burton v. Burton*, 26 How. Pr. 474, it was held the Act was designed for the benefit of "alien white women."

The Supreme Court of the United States, in *Kelly v. Owen*, 7 Wall. 496, 19 L. ed. 283, expressed the opinion that the terms of the Act limit the application of the law to "free white women."

In *Kane v. McCarthy*, 63 N. C. 299, it was decided that

"a white woman not an alien enemy" answered the description required by the section under consideration. To the same effect is 14 Ops. Atty. Gen. 403. See, also, Secy. Hay to Mr. Cruger, February 6, 1903.

In *Leonard v. Grant*, 6 Sawy. 603, 5 Fed. 11, which was decided after the extension by the Act of July 14, 1870 (16 Stat. at L. 256, Ch. 254, Sec. 7, U. S. Comp. Stat. 1901, 1333), of the naturalization laws to the African, it was declared that the law applied to free white persons, or persons of African nativity or descent. It was decided in this case that a native Swiss woman became a citizen of the United States by virtue of her marriage to a citizen.

In *Broadis v. Broadis*, 86 Fed. 951, it was held that an alien woman of African descent, married to a citizen of the United States is a citizen of the United States, since the extension of the naturalization laws to persons of African birth or descent.

In the case of *Pequignot v. Detroit*, 16 Fed. 215, the court said: "All doubt upon the construction to be placed upon the words, 'who might herself be naturalized,' was put at rest by the case of *Kelly v. Owen*, 7 Wall. 496, 19 L. ed. 283, in which it was held that these terms only limited the application of the law to 'free white women,' inasmuch as the naturalization act existing at the time only required that a person applying for its benefits should be a 'free white person,' and not an alien enemy."

The Act of August 9, 1888 (25 Stat. at L. 392, Chap. 818, Sec. 2), provides that every Indian woman, member of any Indian tribe in the United States, or any of its territories except the Five Civilized Tribes in the Indian Territory, who may hereafter be married to any citizen of the United States, is declared to become by such marriage a citizen of the United States, with all the

rights, privileges, and immunities of any such citizen, being a married woman.

As the law now stands, therefore, any white woman, or woman of African nativity or descent, or Indian woman, a member of any Indian tribe (except a member of the Five Civilized Tribes in Indian Territory), married to a citizen of the United States, is a citizen thereof.

C. Time of Marriage.

What is the significance of the term "married" in the section under consideration? In order to confer citizenship upon the wife, must the husband be a citizen at the time of marriage, or does his subsequent naturalization have the same effect?

Kelly v. Owen, 7 Wall. 496, 19 L. ed. 283, was a case in which it appeared that one Miles Kelly, a native of Ireland, emigrated to the United States in 1848. In 1853 he married Ellen Duffy; in 1855 he was naturalized; and in 1862 he died in the city of Washington, intestate, seized of certain real property. He left surviving him in the United States, his widow, the said Ellen, and two sisters, Ellen Owen and Margaret Kahoe. The sister Ellen arrived in 1856, and was married in 1861 to Edward Owen, who had been naturalized in 1835. The sister Margaret arrived in the United States in 1850, and was married in 1862 to James Kahoe, who was naturalized in 1854. Mr. Justice Field, delivering the opinion of the court, said that the case turned upon the construction given to the second section of the Act of Congress of February 10, 1855 (10 Stat. at L. 604, Ch. 71, U. S. Comp. Stat. 1901, 1268). He said: "As we construe this Act, it confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous Acts of Congress provide. The terms 'married,' or 'who shall be

married,' do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that whenever a woman, who under previous Acts might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the passage of the Act or subsequently, or before or after the marriage, she becomes, by that fact, a citizen also. His citizenship, whenever it exists, confers, under the Act, citizenship upon her. The construction which would restrict the Act to women whose husbands, at the time of marriage, are citizens, would exclude far the greater number, for whose benefit, as we think, the Act was intended. . . . It follows, from these views, that the widow and the two sisters were citizens of the United States upon the decease of the intestate husband. The widow and Margaret Kahoe became such on the naturalization of their respective husbands, and Ellen Owen became such on her marriage."

And in *Kane v. McCarthy*, 63 N. C. 299, where the facts showed that the naturalization of the husband took place after the marriage, the court said: "The circumstance that the husband was not a citizen at the time of marriage is wholly immaterial, for he became a citizen afterward *ipso facto*." Referring to the wife, the court said: "Being a free white woman married to a citizen, [she] comes within the description and the very words of the Act of Congress [10 Stat. at L. 604, Chap. 71, Sec. 2, U. S. Comp. Stat. 1901, 1268], 'and is deemed and taken to be a citizen;' for it is the status of being married to—being the wife of—a citizen that makes her one. It can in no possible view make any difference whether the marriage ceremony is performed first and then the husband becomes a citizen, or whether he becomes a citizen first and the marriage afterwards takes place. Whenever the two events concur and come together 'she

is a woman married to a citizen.'" See, also, 14 Ops. Atty. Gen. 402. The fact that the wife is under twenty-one years of age does not exclude her from citizenship. She acquires citizenship when her husband becomes a citizen. *Renner v. Müller*, 57 How. Pr. 229.

The wife of an alien becomes a citizen upon the naturalization of her husband. *People v. Newell*, 38 Hun, 78.

D. Necessity of Residence in the United States.

Whether, under this law, residence in the United States, is essential, in order to confer citizenship upon a woman of foreign nationality married to a citizen of the United States, is not entirely well settled, although the better view appears to be that such residence is necessary.

It has been contended that an alien woman, in order to be naturalized by marriage to an American citizen, must have resided in the United States for the statutory period of five years. In *Burton v. Burton*, 1 Keyes, 359, the judges of the Court of Appeals of New York were divided in opinion upon this point. Mr. Justice Mullin said: "If a residence of five years was not a condition precedent to citizenship, residence for some length of time was most obviously contemplated. Without residence she could not be naturalized, and it is the most essential of all the requirements for naturalization, and can not be dispensed with, unless the intention to dispense with it is most clearly manifested by the legislature." But Mr. Justice Wright thought that the act did not require that the woman claiming its benefits should have resided within the United States; and, if it did, he thought the residence of the wife was, by construction of law, the same as that of her husband.

a. Residence in the United States Held not to be Necessary.

In *Kane v. McCarthy*, 63 N. C. 299, it was decided that a woman who, in 1857, married in Ireland a naturalized citizen of the United States, was a citizen of the United States although she always resided in Ireland.

The Circuit Court of the United States, in the case of *Ware v. Wisner*, 50 Fed. 310, held that a nonresident alien woman who marries a citizen of the United States is capable of inheriting, in Iowa, since she thereby becomes a citizen of the United States under Rev. Stat. Sec. 1994 (U. S. Comp. Stat. 1901, 1268).

In *Headman v. Rose*, 63 Ga. 458, it was held that an alien woman whose husband becomes a naturalized citizen of the United States, is under Section 2 of the Act of 1855 (10 Stat. at L. 604, Ch. 71, R. S. 1994, U. S. Comp. Stat. 1901, 1268), thereby made a citizen, though she may live at a distance from her husband for years, and never come to the United States until after his death.

In the opinion of Attorney General Williams (14 Ops. Atty. Gen. 402), an alien woman residing abroad, who has intermarried with a citizen of the United States residing abroad, the marriage having been solemnized abroad, and the parties after marriage continuing to reside abroad, is to be regarded as a citizen of the United States within the meaning of said Act, though she may never have resided within the United States.

b. Residence in the United States Held to be Necessary.

In *Burton v. Burton*, 26 How. Pr. 474, where aliens were married abroad, the husband came to the United States, was naturalized and died, the wife not coming to this country until after his death, the court in passing upon her citizenship, said:

“The Act of 1855, therefore, as we glean from this previous legislation, though unfinished, the history of the legislative object to be attained by it, and as well the

general considerations which influence nations in framing naturalization laws, was designed, certainly, for the benefit of an alien white woman, whether resident or not, married to a person who was at the time of the marriage a citizen of the United States, thus, securing, by the same law, the rights of citizenship to the children of American citizens born abroad, and to such alien wife all legal rights of citizenship which otherwise, and by reason of her alienism, she might not possess . . . Construed with liberality, however, it might be held also to extend to an alien woman resident in this country, though married abroad to an alien, and who came to this country with him or followed him here, and in that way, or in one of these ways, identified herself with the country of his adoption. . . . In this case the plaintiff has neither sought to derive the benefit of her husband's naturalization by coming with or following him here nor entitled herself to the benefit of a liberal construction in her favor of the act, as suggested by a residence in this country of any duration prior to her husband's death. Her rights, therefore, as a citizen depend entirely upon the construction of the section of the statute under consideration, and I am of the opinion that she has no claim upon her husband's estate thereunder. He was not, when he married her, a citizen of the United States, and she was never a resident thereof during his life. On the contrary, she was, and continued to be, both alien and stranger.

"The plaintiff being an alien, and having married an alien, and not having resided in this country prior to her husband's death, has no dower right in the lands of which her husband died seized under the provisions of the act of the legislature passed in 1845."

Secretary Seward, in 1868, in the case of the wife and children of one Valon, a native Italian who left his family in Italy, came to the United States, was subsequently

naturalized here, and then sought the assistance of the Department of State in overcoming an impediment interposed to their embarkation from that country, said: "It may be open to question whether the Act of Congress of February 10, 1855, declaring to be a citizen any woman who might be lawfully naturalized and who has married a citizen of the United States, can be deemed to have operated upon a woman who has never been within the jurisdiction of this Government. This doubt renders it inexpedient to issue a passport to the lady in question, as the law requires that passports be issued only to citizens of the United States. The facts of the case will, however, be communicated to our consul at Naples with instructions to use his good offices to procure the withdrawal by the state authorities of all obstacles to the emigration of Mrs. Valon and her children." Mr. Seward to Mr. Tinelli, April 1, 1868; 3 Moore's Int. Law Digest, 486.

In 1888, Asst. Secy. Rives, said, referring to the same question: "While the general rule is that the wife and minor children share the fortunes of the husband and father, it is necessary that they should in fact partake of his change of domicil and allegiance, and it has been held that the naturalization of an alien in the United States does not require this Government to regard as American citizens those members of his household who have never been within the jurisdiction of the United States, but have remained in the land of their original allegiance." Mr. Rives to Mr. Smith, Dec. 13, 1888; 3 Moore's Int. Law Digest, 486.

Secretary Foster, in an instruction to the American Minister to Turkey, in 1893, said:

"Although Attorney General Williams, in his opinion of June 4, 1874, 14 Op. 402, referring to *Kelly v. Owen*, 7 Wall. 496, and to certain other cases, stated that the authorities 'go to the extent of holding that, irrespective

of the time or place of marriage or the residence of the parties, any free white woman, not an alien enemy, married to a citizen of this country, is to be taken and deemed a citizen of the United States,' yet in view of the obstacles to claiming for the laws, judicial decisions, and executive opinions of the United States effective validity beyond the jurisdiction of the United States, this Department prudently refrains from asserting its application to the case of an alien wife continuing within her original allegiance at the time of her husband's naturalization in the United States, inasmuch as the citizenship of the wife might not be effectively asserted as against any converse claim of the sovereignty within which she has remained. The result would naturally be a conflict of private international law, wherein the state within whose actual jurisdiction the wife remains might be found to have the practical advantage of the argument." Mr. Foster, Secretary of State, to Mr. Thompson, Minister to Turkey, February 9, 1893, 3 Moore's Int. Law Digest, 486.

Mr. Gresham expressed the opinion that naturalization in the United States has no international effect on the allegiance of the wife and children of the naturalized person while they continue to reside in the country of origin. Secretary Gresham to Mr. Watrous, January 23, 1905, 3 Moore's Int. Law Digest, 487.

And Secretary Olney, in 1896, in a report in response to a resolution of the Senate, expressed the view that the naturalization of a Turkish subject in the United States does not operate to naturalize his wife, who has never been in the United States, and who is at the time dwelling in a foreign country. He said: "The naturalization laws of the United States being obviously framed to permit the bestowal of the franchise of citizenship upon certain persons of alien birth who are within its jurisdiction, and the application, of these statutes being intrusted to the judicial branch, it is clear that they can

not operate to naturalize by indirection or by executive interpretation a person who is an alien by birth and origin, who has never been within the jurisdiction of the United States, and who at the time may be dwelling within a foreign jurisdiction." S. Doc. No. 83, 1st Session, 54th Congress.

Secretary Olney added, however, that the Turkish government had, on several occasions permitted the emigration of the wives and children of Turkish subjects who had come to the United States and here acquired citizenship, leaving their families behind them; had even permitted the emigration of other kinsmen of a degree not within the purview of the naturalization laws of the United States; and had also, asserting a discretionary power in the premises, refused to permit the emigration of the families of naturalized Armenians, even within the marital or filial degree. He continued: "The good offices of the United States Minister are uniformly exerted on all proper occasions to assist the emigration of such persons, upon permission properly secured from the Turkish authorities, and when funds have been assured to pay the journey, he has assisted their departure. He has likewise assisted the coming to the United States of the wives of citizens of Armenian origin, who, being in this country at or subsequent to the naturalization of their husbands, have returned to Turkey; and of the children of such citizens born abroad subsequent to the naturalization of the father, or who may have acquired American citizenship by actual presence in the United States subsequent to the father's naturalization, and in such instances permission for the families to emigrate has been demanded as of right." For. Rel. 1895, Part II, 1472.

E. Nature of Citizenship Acquired.

What is meant by the phrase, "shall be deemed a citizen," in the section of the Revised Statutes under consideration?

"The phrase, 'shall be deemed a citizen,' in Section 1994, Rev. Stat. (U. S. Comp. Stat. 1901, 1268) or as it was in the Act of 1855 (10 Stat. at L. 604, Chap. 71, Sec. 2), 'shall be deemed and taken to be a citizen,' while it may imply that the person to whom it relates has not actually become a citizen by the ordinary means or in the usual way, as by the judgment of a competent court, upon a proper application and proof, yet it does not follow that such person is on that account practically any the less a citizen. The word 'deemed' is the equivalent of 'considered' or 'judged,' and therefore, whatever an Act of Congress requires to be 'deemed' or 'taken' as true of any person or thing must, in law, be considered as having been duly adjudged or established concerning such person or thing, and have force and effect accordingly. When, therefore, Congress declares that an alien woman shall, under certain circumstances, be 'deemed' an American citizen, the effect when the contingency occurs, is equivalent to her being naturalized directly by an Act of Congress or in the usual mode thereby prescribed." *Leonard v. Grant*, 6 Sawyer, 603, 5 Fed. 11.

The Supreme Court, in *Kelly v. Owen*, 7 Wall. 496, 19 L. ed. 283, said that the object of the Act was to allow the citizenship of the wife "to follow that of her husband, without the necessity of any application for naturalization on her part."

In *U. S. v. Kellar*, 11 Biss. 314, 13 Fed. 82, Mr. Justice Harlan said that the woman, "upon her marriage, therefore, with a naturalized citizen of the United States, . . . became, under the plain words of Sec. 1994 [U. S. Comp. Stat. 1901, 1268], *ipso facto*, a citizen of the United States, as fully as if she had complied with all the provisions of the statutes upon the subject of naturalization."

And in *Haberacker's case*, Mr. Wharton, Acting Secretary of State, in an instruction to Mr. Phelps, said: "It

is uniformly held under Sec. 1994 [U. S. Comp. Stat. 1901, 1268], that an alien woman who might herself be lawfully naturalized, by marriage to a citizen becomes herself a citizen without any previous declaration or act on her part, or without reference to the previous length of her residence in this country, as fully to all intents and purposes as if she had become a citizen upon her own application and by the judgment of a competent court." Mr. Wharton to Mr. Phelps, March 26, 1891, MSS. Inst. to Germany, For. Rel. 1891, 508.

F. Effect of Death of Husband on Citizenship of Alien Woman Married to an American.

The Act of March 2, 1907 (Sec. 4), provides that "any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation."

It was the practice of the Department of State, prior to the passage of the Act of March 2, 1907, in passing upon applications for passports and for protection abroad, to regard the American citizenship of a foreign-born widow of a citizen of the United States as subsisting at least while she continued to reside in this country. There was no provision by statute for the renunciation of citizenship, however. This law serves the useful purpose of enabling a widow of an American citizen, who desires to resume her former nationality, to formally announce her purpose by renouncing, in a naturalization court, the citizenship which she acquired by marriage.

If the widow resides abroad, and desires to retain the

citizenship acquired by her marriage, she is required, under this law, to register before a consul of the United States, within one year after the termination of the marital relation.

The same rules apply in case the marriage is terminated by divorce as in the event of the death of the husband.

Instructions of the Department of State.

The Executive Order of President Roosevelt of April 6, 1907,* amending the diplomatic and consular regulations so as to embody in them the provisions of the Act of March 2, 1907, makes the following prescription concerning foreign women who have acquired American citizenship by marriage to citizens from whom they have afterward been separated by death or absolute divorce:

“Registration to Resume or Retain Citizenship.

“Whenever any foreign woman has acquired American citizenship through her marriage, upon the death of her husband or upon their absolute divorce she must, if she is abroad and desires to retain her American citizenship, register as an American citizen before a United States Consul within one year after the termination of the marital relation. . . .”

The Department of State, on April 19, 1907, issued a circular instruction, addressed to the American diplomatic and consular officers to carry this regulation into effect, the pertinent portion whereof reads as follows:

“A foreign woman who has acquired American citizenship by marriage to an American citizen and who, upon the termination of the marital relation by the death of her husband or by their absolute divorce, desires to retain the American citizenship which she acquired through her marriage, must, within one year after the termination of the marital relation, register with an American consular officer her intention to retain her American citizenship.

* For the full text of this order see Appendix.

"The form of such registration shall be as follows:
 "I, [name of affiant] do solemnly swear (or affirm) that I was born on [date of birth] in [place of birth] and was, up to the time of my marriage on [date of marriage] to [name of late husband] a citizen (or subject) of [name of country]; that the said [name of late husband] was born in [place of birth] and was, at the time of his death (or our divorce), a citizen of the United States by [birth or naturalization]; that the said [name of husband] died (or we were divorced) on [date of death or divorce] at [place of death or divorce]; that I am now temporarily residing in [place of residence] and desire to retain my American citizenship; that it is my intention to go to the United States within [length of intended foreign residence] with the intention of residing and performing the duties of an American citizen.

.....
 "Sworn and subscribed to before me this day of

.....,
American Consul.

"The consul's certificate to this affidavit should be the same as in the case of an American woman married to a foreigner who desires to resume her American citizenship, and documentary evidence of the allegations relative to the termination of the marital relation should be required as in the case of an American woman married to a foreigner who desires to resume her American citizenship. Also documentary proof of the husband's citizenship should be required. The affidavit and the consul's certificate should be made in duplicate and reported as in the case of an American woman who desires to resume her citizenship.

I am, gentlemen, your obedient servant,
 ELIHU ROOT."

G. Citizenship of American Woman Married to an Alien.

a. Under law prior to 1907.

Under Section 1994 of the Revised Statutes, which we have been considering, an alien woman who marries a

citizen of the United States is deemed a citizen. Is the converse of this rule true? Does an American woman become an alien by marriage to a foreigner? The status of such persons prior to the enactment of the law of March 2, 1907, and the reasons inducing Congress to act in the matter, appear from the following review of the decisions of the courts and opinions of the Executive Department of the government, and of international claims commissions to which the United States has been a party.

In the case of Mrs. Preto (10 Ops. Atty. Gen. 321), a woman born in the United States, of American parents, who married a Spanish subject residing here, and subsequently removed with her husband to Spain, where she lived until his death, Attorney General Bates, in 1862, held that the marriage did not deprive her of her native citizenship.

And in 1877, in Mrs. D'Ambrogia's case (15 Ops. Atty. Gen. 599) Solicitor General Phillips decided that the marriage of an alien-born woman to a naturalized citizen of the United States conferred on her "a permanent status of citizenship, defeasible only as in the case of other persons;" and, on the authority of *Shanks v. Dupont*, 3 Pet. 242, 7 L. ed. 666, it was further held that her subsequent marriage with an alien did not affect this status.

But in 1866, in the case of Mrs. Berthemy (12 Ops. Atty. Gen. 7), who was born in France, of American parents, there married a Frenchman, and continued to reside in France after the death of her husband, Attorney General Stanbery held that she was not a citizen of the United States.

And, in 1869, Attorney General Hoar expressed the opinion that the same woman, who was still domiciled in France, was not a citizen of the United States for the purposes of the internal revenue law. The Attorney General, however, expressly disclaimed any opinion upon

the question whether a native woman marrying an alien "is not, after such marriage, a citizen of the United States in a qualified sense." 13 Ops. Atty. Gen. 128.

In the claim of the heirs of *Felix Mahan v. Mexico*, American and Mexican claims commission, convention of 1868 (15 Stat. at L. 679), the umpire held that the daughter of the original claimant, who was married to a Spaniard, was not a citizen of the United States. 3 Moore's Int. Arbitrations, 2485.

In the cases of *Bowie v. United States*, and *Calderwood v. United States*, and *Tooraen v. United States*, before the American and British claims commission, treaty of 1871 (17 Stat. at L. 863), it was held that the national character of a married woman is governed by that of her husband in all cases, irrespective of domicile; and that on the death of the husband the national character of the widow, acquired by marriage, remains unchanged. From this conclusion Mr. Commissioner Frazer (the American commissioner) dissented in the case of a widow of American origin who had always remained domiciled in the United States, holding that in such case, upon the death of her British husband, her original national character reverted. In the case of *Mrs. Bowie*, the claimant was by birth a British subject, but was at the time of the alleged injuries the widow of a citizen of the United States, and domiciled in the insurrectionary State of Virginia, and before the filing of her memorial had again intermarried with a citizen of the United States, who was still living and there domiciled. Her claim was disallowed, all the commissioners agreeing. In the case of *Mrs. Tooraen*, claimant was by birth a British subject, her husband at the time of marriage being a subject of Sweden, but naturalized as a citizen of the United States subsequent to the marriage. Claimant and her husband were both domiciled from the time of marriage within the United States. Her claim was

unanimously dismissed. Hale's Report, 17; 3 Moore, International Arbitrations, 2486.

In the case of *Jane L. Brand v. United States*, American and British Claims Commission, treaty of 1871 (17 Stat. at L. 863), claimant, a native of Ireland, married in New Orleans a citizen of the United States, who died, and she continued domiciled in New Orleans. The commission held that the national character of a married woman was in all cases determined by that of her husband; and that such national character, once acquired by marriage, continues on the death of the husband; that this doctrine had always prevailed in Great Britain, as well as elsewhere, where the domicil of the wife and widow had continued to be that of the husband's nationality; and that by no treaty stipulation or law, municipal or international, was the widow even allowed to reclaim her original nationality while still domiciled within the nationality of her husband, until the conventions of 1870 and 1871; and that by those conventions she could only reclaim her original nationality in the form provided by the convention of 1871, which in the case of Mrs. Brand had never been done; that she was therefore, both at the time of the commission of the alleged wrongs and at the time of the presentation of her memorial, a citizen of the United States. The claim was dismissed for want of jurisdiction. 3 Moore, International Arbitrations, 2487, 2488.

In the cases of *Mrs. De Brissot* and *Mrs. Hammer*, before the United States and Venezuelan Commission, sitting in Washington, the claimants were born in Venezuela and married citizens of the United States. They were domiciled in Venezuela, and continued to reside there after the death of their husbands. Their claim against the Venezuelan government was for the killing of their husbands. It was held that, inasmuch as they were Venezuelan citizens according to Venezuelan law, and that law and the law of the United States being thus in

conflict, the matter must be decided by the public law. On that basis the claim of the Venezuelan government was considered the better, the claimants were treated as Venezuelan citizens, and their claims ruled out for want of jurisdiction. Opinion of Commissioners, 3 Moore's International Arbitrations, 2457-60.

In several cases before the British and American Mixed Commission, under the treaty of Washington (17 Stat. at L. 803), it was held that a married woman's nationality is governed by that of her husband in all cases, irrespective of domicil, and remains unchanged after his death. Hence, that an American woman married to a British subject, and who continued to live in this country after his death, was still a British subject. The American commissioner dissented from this decision (U. S. Agent's Report, pp. 17, 18, vol. 6, Washington Arbitration). These claims arose before the passage of the British Act of 1870, 33 and 34 Vict. 104, Chap. 14.

In *Pequignot v. Detroit*, 16 Fed. 211, it was decided (in 1883) by the United States Circuit Court, that an alien woman who has once become an American citizen by marriage, which is subsequently dissolved, may resume her alienage by marriage to a native of her own country. In this case the facts were that a native French woman came to the United States with her parents when she was a child. Her parents never applied for naturalization. In 1863 she married one Partridge, a native citizen of the United States. Upon his death several years later she married one Pequignot, a native of France, who never sought naturalization in this country. While living with him the suit was brought. Judge Brown (afterward Associate Justice of the United States Supreme Court) expressed doubt as to the binding force of *Shanks v. Dupont*, 3 Pet. 242, 7 L. ed. 666, in its literalisms, because the two reasons given for that decision have ceased to exist, viz: (1) that the general doctrine is

“that no person can, by any act of their own, without the consent of the government, put off their allegiance and become aliens;” (2) that, “if it were otherwise, then a *feme* alien would by marriage become, *ipso facto*, a citizen, and would be dowable of the estate of her husband, which are clearly contrary to law.”

In view of the Act of July 27, 1868 (Rev. Stat. Sec. 1999, U. S. Comp. Stat. 1901, 1269), expressly recognizing the right of expatriation, and the Act of February 10, 1855 (Rev. Stat. Sec. 1994, U. S. Comp. Stat. 1901, 1268), declaring that any woman married to an American citizen shall be deemed a citizen, Judge Brown said that it seemed to him “that we ought to apply the maxim *cessante ratione, cessat lex*, to this case, and are not bound to treat it as controlling authority.” He added: “We should regard the sections above quoted as announcing the views of Congress upon this branch of international law, and ought to apply the same rule of decision to a case where a female American citizen marries an alien husband, that we should to a case where an alien woman marries an American citizen.”

In *Comitis v. Parkerson* (decided in 1893), 22 L. R. A. 148, 56 Fed. 556, the plaintiff, a native citizen of Louisiana, married a native-born subject of Italy who had come to Louisiana and engaged in business, without intending ever to return to Italy. He never became naturalized. After the marriage, the woman and her husband, until his death, lived together in Louisiana without any intention on the part of either to depart from the United States. After the husband's death the widow continued to reside in Louisiana. The court (Billings, J.) held that expatriation must be effected by removal from the country, and that, in the absence of any act of Congress authorizing it, there can be no implied renunciation of citizenship by an American woman marrying an alien.

In *Jenns v. Landes*, 85 Fed. 801, it appeared that the complainant was born in the State of Washington, and lived with her father until the year 1896, when she permanently removed from the State of Washington, and was married to a British subject; that she and her husband resided in Canada, and had their domicile in the city of Victoria. The Canadian statute of 1886, Vol. 2, Chap. 113, Sec. 22, declared that "a married woman shall, within Canada, be deemed to be a subject of the state of which her husband is for the time being a subject." The court held that the complainant became an alien, as respects the United States, so as to enable her to sue in a Federal court.

In *Ruckgaber v. Moore*, 104 Fed. 947, the United States Circuit Court for the eastern district of New York held that the political status of a native-born American woman, who married a citizen of France and removed with him to that country, followed that of her husband. The woman having died in France, the court declared that she must be regarded as having been a nonresident alien at the time of her death. The court said: "By the several statutes of America, France, and Great Britain the marriage of a citizen of such country with an alien wife confers upon the latter the citizenship of the husband; and this policy of three great powers, in connection with Sec. 1999 of the Revised Statutes [U. S. Comp. Stat. 1901, 1269], which proclaims that expatriation is an inherent right, establishes that the political status of the wife follows that of her husband, with the modification that there must be withdrawal from her native country, or equivalent act expressive of her election to renounce her former citizenship as a consequence of her marriage. Some serious objection to this, or even the opposite conclusion, exist, but it has been reached after due consideration of the subject, and pertinent authorities,

including *Shanks v. Dupont*, 3 Pet. 243, 7 L. ed. 666; *Pequignot v. Detroit*, 16 Fed. 211; and *Comitis v. Parker-son*, 22 L. R. A. 148, 56 Fed. 556."

For the same reason the court declared that the daughter of the deceased, who had intermarried with a citizen of Germany and for eight years previous to her mother's death had resided there, should be regarded as a citizen of that country.

The question was presented to the Department of State in 1871. In this case an American woman had married an alien, and after his death applied to our legation in Paris for a passport. Secretary Fish, in an instruction to Mr. Washburne, said: "By the law of England and the United States, an alien woman on her marriage with a subject or citizen merges her nationality in that of her husband. But the converse has never been established as the law of the United States, and only by the Act of Parliament of May 12, 1870, [33 and 34 Vict. 104, Ch. 14] did it become British law that an English woman lost her quality of a British subject by marrying an alien. The Continental codes, on the other hand, enable a woman whose nationality has been changed by marriage to resume it when she becomes a widow, on the condition, however, of her returning to the country of her origin. The widow to whom you refer may, as a matter of strict right, remain a citizen, but, as a citizen has no absolute right to a passport, and as the law of the United States has, outside of their jurisdiction, only such force as foreign nations may choose to accord it in their own territory, I think it judicious to withhold passports in such cases unless the widow gives evidence of her intention to resume her residence in the United States." Sec'y Fish to Mr. Washburne, February 24, 1871, MSS. Inst. to France.

Secretary Fish in a letter to the President, dated

August 25, 1873, said: "Chief Justice Marshall (*Murray v. The Charming Betsy*, 2 Cranch, 119, 2 L. ed. 226) says that when a citizen by his own act has made himself the subject of a foreign power, his situation is completely changed, and the act certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance. . . . Hence, it would seem that the marriage of a female citizen of the United States with a foreigner, subject of a country by whose laws marriage confers citizenship upon the wife of its subject, and her removal to and residence in the country of her husband's citizenship, would devest her of her native character of an American citizen." For. Rel. 1873, pt. 2, 1187.

In 1874 the case was presented of an American lady, native born, who, after arriving at womanhood, went to Europe and married an Englishman; after living many years with her husband and having children by him, she obtained a divorce in England. She applied to the United States legation in Paris for a passport, to be issued in her maiden name and as an American citizen. Mr. Washburne, the United States minister, declined giving such a passport for the reasons: "(1) That there is nothing in the decree of divorce authorizing her to take her maiden name; and that I am not advised that the laws of England, independent of the order in the decree, authorize a divorced woman, at her option, to take her maiden name. (2) Touching the question of citizenship, I consider her case analogous to that decided by you in your despatch dated February 24, 1871, *supra*, where you decided that it would be judicious to withhold a passport in a case where an American woman had married a foreigner, and her husband had afterwards died, unless she gave evidence of her intention to resume her residence in the United States. In the present case, the party desiring the pass-

port not only does not 'give evidence of her intention to resume her residence in the United States,' but avows that her purpose in obtaining a passport in her maiden name is to enable her to marry a Frenchman."

Mr. Washburne said that it was strongly contended by the parties interested that the decree of divorce dissolved the nationality of the woman as well as the bonds of matrimony. He added that he did not take this view of the subject, but he had been pressed with so much insistence to give the passport that he had to promise to submit the question to the Department for its decision. The course pursued by the minister was approved by Secretary Fish. For. Rel. 1874, 408, 413.

In the case of Mrs. Lawrence, a native of Great Britain, who married a citizen of the United States, from whom she obtained a divorce, Acting Secretary Uhl held that "Mrs. Lawrence, by her marriage, became an American citizen, both by British and American law; she is undoubtedly still an American citizen, viewed either from the American or the English standpoint. She has not lost her American nationality by any method recognized by our law; and, according to British law, an English woman, who, by marriage acquires foreign citizenship, must, in order to reacquire her original nationality upon her husband's death, obtain a certificate therefor from the British authorities. It is not believed that any different rule would be applied where the parties are divorced. As Mrs. Lawrence claims American citizenship, it is assumed that she has not taken any steps to reacquire British nationality. It is not understood, either, that there is any conflicting claim to her allegiance." Mr. Uhl to Mr. Denby, January 30, 1894, For. Rel. 1894, 139.

The question was again presented to Secretary Fish in Degallado's case. He said: "It would seem that the marriage of a female citizen of the United States with a

foreigner, the subject of a country by whose laws marriage confers citizenship upon the wife of a subject, and her removal out of the jurisdiction of the United States and residence in the country of her husband's citizenship would devest her of her native citizenship." He added: "But, although the marriage of a female citizen of the United States with a foreigner should make her a citizen of the country to which her husband belongs, it does not necessarily follow that she becomes subject to all the disabilities of alienage, such, for instance, as inability to inherit or transfer real property," Mr. Fish to Mr. Williamson, September 22, 1875, MSS. Inst. to Costa Rica.

In 1886 Mr. Bayard, in the case of Mrs. Zografo, held that a native-born American woman, who marries a Turkish subject and takes up her residence in Turkey, becomes a Turkish subject. Upon the death of her husband, in order to revive her American nationality, she must leave Turkey and take up an American residence. Mr. Bayard to Mr. Zografo, February 6, 1886, MSS. Dom. Let.

In 1887 Mrs. Arana, who had been born in the United States in 1846 of American parents, and had married in 1869 a Spanish subject, claimed that, by the death of her husband in 1883, her United States citizenship had reverted. She applied to the United States minister to Salvador for a passport. Secretary Bayard, in instructing the minister, quoted from Secretary Fish's instruction of February 24, 1871, to Mr. Washburne, *supra*, and said that he was not disposed to depart from this precedent. He held that Mrs. Arana, so long as she remained without the jurisdiction of this government was not entitled to the privileges of a citizen of the United States, so far, at least, as would entitle her to diplomatic interposition against the government of Salvador on a claim accruing since her marriage and departure from the United States.

Secretary Bayard to Mr. Hall, January 6, 1887, For. Rel. 1887, 92.

In 1890, in the case of Carl Heisinger, Mr. Blaine said that the Department had several times taken the view that the marriage of an American woman to a foreigner does not completely divest her of her original nationality; that her American citizenship was held for most purposes to be in abeyance during coverture, but to be susceptible of revival by her return to the jurisdiction and allegiance of the United States. Mr. Blaine to Mr. Phelps, Feb. 1, 1890, For. Rel. 1890, 302.

And in an instruction to the American consul at Sagua la Grande, June 7, 1895, Acting Secretary Uhl said: "The view has been taken by this Department in several cases that the marriage of an American woman to a foreigner does not completely divest her of her American citizenship, but that the same is only suspended during coverture, and reverts upon the death of her husband, if she is residing in the United States, or upon her returning to this country if she is residing abroad." Van Dyne on Citizenship of the United States, 137.

It is believed that this view that marriage to an alien does not completely divest an American woman of her original nationality, but that it is only suspended while the marriage exists, and reverts upon the husband's death if the wife is residing in the United States, or upon her return here, if residing abroad, was based on the case of *Moore v. Tisdale*, 5 B. Mon. 352, which was decided in Kentucky in 1845. The facts in that case were that a native American woman went with her husband, who was a citizen of the United States, from their home in Kentucky, to the "province of Texas," prior to 1845, resided there for some years, returning to Kentucky upon the death of her husband. The court decided that as she had returned to the United States soon after the death of her husband, "it should be assumed that she

had merely submitted herself temporarily, and as a wife, to the dominion of Texas, without having renounced her native allegiance; that she, therefore, never has been an alien, and that her rights of property remain as if, instead of having been a temporary resident of Texas, she had, during her absence from Kentucky, been a resident of one of the other states of the Union. She can not, therefore, be debarred of her dower on the ground of having been an alien at the death of her husband."

In October, 1895, Mrs. Beatens, a native-born American woman, who had in 1889 married a Hollander residing in the United States, applied for a passport as an American citizen. She was temporarily sojourning in Germany for the purpose of completing her musical education. In a letter to the Secretary of Agriculture, who had transmitted Mrs. Beatens' application, Secretary Olney, after citing the decisions of the courts, and of the Attorneys General on the subject of citizenship of married women, said: "It has been the uniform practice of this Department to decline to grant passports to American women who are married to aliens. In my opinion the Department would not be warranted in departing from this practice in the present case." Mr. Olney to Mr. Morton, MSS. Dom. Let. October 26, 1895. Van Dyne, *Citizenship of United States*, 138.

Secretary Sherman, in an instruction to the United States minister at St. Petersburg, March 15, 1897, said:

"By our statute an alien wife of an American citizen shares his citizenship. By the usual rules of Continental private international law a woman marrying an alien shares his status, certainly during his life; but thereafter, on widowhood, reverts to her original status unless she abandons the country of her origin and returns to that of her late husband." For. Rel. 1901, 443.

These authorities were not entirely uniform. But the

decided weight of authority was to the effect that the marriage of an American woman to an alien conferred upon her the nationality of her husband.

Cockburn, in his work on Nationality (published in 1869), says: "In every country, except where the English law prevails, the nationality of a woman on marriage merges in that of her husband, she loses her own nationality and acquires his" (p. 24). Since this was written, the British Act of 1870 has been passed, which expressly declares that a married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject.

The practice of the Department, alluded to above, of declining to grant passports to American-born women married to foreigners, showed the recognition of this principle by the Executive Department of our government.

Provision is made, in all Continental European codes, for enabling a woman whose nationality of origin has been changed by marriage into that of her husband, to resume, if so minded, her original nationality on becoming a widow; on the condition, however, if not resident in the country of origin, of returning to it. Cockburn, *Nationality*, 25.

And it had been repeatedly held by the Department of State that the nationality of origin of an American-born woman reverted upon the death of her alien husband if she were residing in the United States, or upon her returning to this country if residing abroad.

b. Act of March 2, 1907.

To resolve any doubt that might exist because of variant decisions of the courts and opinions of Secretaries of State as to the effect of the marriage of an American woman to an alien, the Citizenship Commission

of 1906 recommended and Congress enacted the following law:

“Any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.” Sec. 3, Act of March 2, 1907.

This law not only served to settle definitely, and in the same manner that the matter has been fixed by statute in most other civilized countries, the citizenship of married women, but it removed from the sphere of “executive legislation” the constantly recurring question of the reversion of nationality of married women upon the death of their alien husbands. The proposition that upon the termination of the marriage relation, the American nationality of an American woman married to a foreigner reverted, did not square with the proposition laid down by Chief Justice Marshall that when a citizen becomes an alien—by whatever process—he can recover his rights as a citizen only by going through the forms which our laws prescribe for the naturalization of aliens.

Instructions of the Department of State.

The Executive Order of President Roosevelt of April, 6, 1907,* amending the diplomatic and consular regulations so as to embody in them the provisions of the Act of March 2, 1907, makes the following prescription concerning American women who have married foreigners and been separated from their husbands by death or absolute divorce:

“Registration to Resume or Retain Citizenship.—When an American woman has married a foreigner and

*For the full text of this order see Appendix.

he dies or they are absolutely divorced, in order to resume her rights as an American citizen, she must register with an American consulate within one year after the termination of the marital relation."

The Department of State, on April 19, 1907, issued a circular instruction addressed to the American diplomatic and consular officers to carry this regulation into effect, the pertinent portion whereof reads as follows:

"A woman who was an American before her marriage to a foreigner, and who, upon the termination of the marital relation by the death of her husband or by their absolute divorce, desires to resume the American citizenship which she enjoyed before her marriage, must, within one year after the termination of the marital relation, register with an American consular officer her intention to resume her American citizenship. The form of such registration shall be as follows:

"I,[name of affiant] do solemnly swear (or affirm) that I was born on[date of birth] in[place of birth] and was, up to the time of my marriage on[date of marriage] to[name of late husband] a citizen of the United States; that the said[name of husband] was born in[place of his birth] and was, at the time of his death (or our divorce), a citizen (or subject) of[name of country]; that the said[name of late husband] died (or we were divorced) on[date of death or divorce] at[place of death or divorce]; that I am now temporarily resident in[place of residence] and desire to resume my American citizenship; that it is my intention to return to the United States within[limit of intended foreign residence] with the intention of residing and performing the duties of an American citizen.

.....

"Sworn and subscribed to before me this day of

[L. S.]

.....,
American Consul.

"I,[name of consul] American consul at [place of consulate] certify that[name of affiant] who signed the above affidavit, is the person she represents herself to be and that the proof presented of her marriage to[name of late husband] and of the termination of her marital relation with[name of late husband] is as follows:[state here nature of proof presented].

"In testimony whereof, I have hereunto signed my name and affixed my seal of office.

.....,
American Consul.

"Documentary evidence in support of the allegations relative to the termination of the marital relation should be required in each case and the nature of such documentary proof should be set forth in the consul's certificate. In the case of a woman having been a native citizen of the United States before her marriage, documentary proof of such citizenship need not be required unless the consul entertains doubts as to the statements made to him, in which case he should require a certificate of birth or the affidavit of a credible witness personally known to him.

"In the case of a woman having been a naturalized citizen of the United States previous to her marriage, proof of the naturalization, such as would be required if she applied for a passport, should be required. The affidavit and the consul's certificate should be made in duplicate, and one copy should be sent to this Department immediately afterwards and the embassy or legation in the country, in which the consulate is situated should be at the same time advised of the making of the affidavit and of the report to the Department."

H. Case of Nellie Grant Sartoris.

By Article 1 of the convention relative to naturalization, concluded between the United States and Great Britain May 13, 1870 (16 Stat. at L. 775), it was provided

that "citizens of the United States of America, who have become, or shall become, and are, naturalized according to law within the British dominions as British subjects, shall . . . be held by the United States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States."

Article 3 provides that "if any such citizen of the United States as aforesaid, naturalized within the dominions of Her Britannic Majesty, should renew his residence in the United States, the United States government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a citizen of the United States, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization."

In 1874 Nellie Grant, daughter of President Grant, married Algernon Sartoris, a British subject, and went to England, where she resided until his death in 1896. In May, 1898, the following joint resolution of Congress was adopted readmitting Mrs. Sartoris to American citizenship, in pursuance of the above treaty. Resolution of May 18, 1898 (30 Stat. at L. 1496):

"Whereas, Nellie Grant Sartoris, widow, daughter of the late General Ulysses S. Grant, being a natural-born citizen of the United States, married in eighteen hundred and seventy-four Algernon Charles Frederick Sartoris, a subject of the Queen of Great Britain, and emigrated to Great Britain, becoming thereby, under the laws of Great Britain, a naturalized British subject, to be recognized as such by the United States, according to the provisions of the convention relative to naturalization between the United States and Great Britain of the thirteenth of May, eighteen hundred and seventy; and

"Whereas, the said Nellie Grant Sartoris has since returned to the United States and renewed her residence

therein, and petitioned Congress to be readmitted to the character and privileges of a citizen of the United States under and by virtue of the provisions of article third of the convention aforesaid; therefore,

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Nellie Grant Sartoris, daughter of General Ulysses S. Grant, be, and she is hereby, on her own application, unconditionally readmitted to the character and privileges of a citizen of the United States, in accordance with the provisions of article third of the convention relative to naturalization between the United States and Great Britain concluded May thirteenth, eighteen hundred and seventy.”

I. Effect of Divorce.

The decree of a competent court granting an absolute divorce would have the same effect as the death of the husband upon the citizenship of the woman.

Secretary Hay, in a case arising before the enactment of the law of 1907, in replying to the request of the United States minister at Berne for instructions as to the issuance of a passport to Mrs. Daisy Annie Newman Van Buren, the daughter of a native citizen of the United States, who had been married to Baron Van Buren, a Dutch subject, from whom she was subsequently divorced, said: “In accordance with the view which the Department has taken in several cases, when an American woman marries an alien her condition from the standpoint of nationality is lost in that of her husband, as long as the marital union lasts. Upon its termination she may resume the nationality of her birth by returning to the United States to reside, if residing abroad, or acquire a new one. In this case Mrs. Van Buren’s status under the laws of the Netherlands calls for no consideration. She does not live in that country, nor does she,

apparently, intend to do so. Her divorce having been lawfully obtained, her marital relations with Baron Van Buren having ceased, her domicil bona fide being in this country, you may properly issue a passport in her favor upon satisfactory proof of the facts as set forth in your despatch, and in the letter from the consul at Geneva." Mr. Hay to Mr. Leishman, March 16, 1899, MSS. Inst. to Switzerland.

In a case coming before the Department of State in 1906, it appeared that a native-born Swiss woman had married in the United States an American citizen, and that thereafter the marital relationship had been dissolved by a decree of absolute divorce in Kansas. The woman then returned to her native country and established a residence there with her parents, until her symptoms of mental infirmity became so pronounced that she was removed to an insane asylum. The Swiss Minister at Washington informed the Department of the intention to send the woman to the United States, and requested that she be permitted to land and that provision be made for her by locating her in some institution.

The Department of State replied stating that, under its practice, "a widow, or a woman who has obtained an absolute divorce, being an American citizen and who has married an alien, must return to the United States or must have her residence here in order to have her American citizenship revert on becoming *feme sole*. Conversely, an alien woman who marries an American citizen and secures a divorce from him in the United States and returns to her native country must be held to have abandoned her citizenship acquired by marriage and to have intended to adopt her native allegiance.

"The views above expressed seem also to be in keeping with the provisions of the Continental codes, which enable a woman whose nationality has been changed by

marriage to resume it when she becomes a widow on the condition of her returning to the country of origin.

"Under the circumstances of the present case, the Department is of the opinion that Mrs. — has lost her nationality as an American citizen; and as the statutes of the United States prohibit the landing of insane aliens, it would seem to be impossible to allow her to land in this country." Mr. Root to Mr. Vogel, June 2, 1906, MSS. Notes to Switzerland.

J. Declaration of Intention of Husband.

As an alien does not become a citizen of the United States by making a declaration of intention, it is clear that his wife does not acquire American citizenship; nor does an alien woman become naturalized by marriage to a foreigner who has merely declared his intention to become a citizen.

Section 2168 of the Revised Statutes provided that: "When any alien, who has complied with the first condition specified in Sec. 2165, [viz., formally declared his intention to become a citizen] dies before he is actually naturalized, the widow and children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law."

The Act of June 29, 1906, repealed Section 2168, and provided that: "When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized, the widow and minor children of such alien may, by complying with the other provisions of this act be naturalized without making any declaration of intention."

Under the provision of Section 2168, when it was in force, there was some doubt as to the exact meaning of the latter part of the section, viz., "taking the oaths prescribed by law." It had been held that what was meant

was "the oaths prescribed by law to be taken by an alien upon his admission to citizenship." Van Dyne, *Citizenship of United States* 98.

It is understood that the object of the amendment of the law was to resolve this doubt, and also to remove any doubt which might have existed as to the meaning of the words "first condition specified in Section 2165," had they been allowed to stand as in the Revised Statutes.

It is to be observed that the declaration of intention and death of the husband and father do not of themselves confer citizenship upon the widow and minor children. There is a further requisite: They must comply with the other provisions of the law, go before a competent court and be admitted to citizenship. And while, under the terms of Section 2168, the intent of the law was apparent to admit them to citizenship merely upon application to a court of naturalization and the taking of the necessary oaths, it is not clear under the language of the existing law that it was intended to dispense with any other requirement in their case than the declaration of intention.

CHAPTER IV.

COLLECTIVE NATURALIZATION.

- I. Naturalization by conquest.
 - A. Allegiance of inhabitants of conquered state.
 - B. Citizenship of inhabitants of conquered state.
 - C. American *ante-nati*.
- II. Naturalization by treaty.
 - A. In general.
 - B. Power of United States to acquire territory by treaty and to prescribe terms upon which it will receive inhabitants.
 - C. Treaties of cession to which the United States has been a party.
 - a. In general.
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 - 3. Case of De Baca.
 - d. Treaty of 1819 with Spain.
 - e. Treaty of 1848 with Mexico.
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 - 1. Insular cases: Decision of Supreme Court.
 - 2. Status of Porto Ricans and Filipinos.
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- III. Naturalization by special act of Congress.
 - A. In general.
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 - E. Naturalization of Indians.
- IV. Naturalization by admission of territory to statehood.
 - A. In general.
 - B. Louisiana.
 - C. Northwest territory.
 - 1. In general.
 - 2. Ohio, Indiana, and Illinois.
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 - D. Florida.
 - E. Texas.
 - F. Power of Congress over territories.
 - G. Nebraska.

COLLECTIVE NATURALIZATION.

Besides naturalization of the individual alien by compliance with the formalities prescribed by the general naturalization law, citizenship may be conferred upon certain people in mass, or upon particular classes of persons. This method of naturalization is called collective naturalization. It may be effected by conquest, by treaty, by special Act of Congress, or by admission of new states.

I. Naturalization by Conquest.**A. Allegiance of Inhabitants of Conquered State.**

According to the general principles of the law of nations, every sovereign nation has, as an inherent attribute, the power to acquire territory by conquest. In the absence of stipulations on the subject, whenever a government acquires territory by conquest the relation of the conquered territory to the new government is to be determined by the conquering state.

The Constitution [of the United States] confers absolutely on the government of the Union the powers of making war, and of making treaties; consequently that government possesses the power of acquiring territory, either by conquest or by treaty. *Insular cases*, 182 U. S. 300. The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed; either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. *American Ins. Co. v. Canter*, 1 Pet. 511, 7 L. ed. 242; *Johnson v. McIntosh*, 8 Wheat. 543.

In *Church of Jesus Christ of L. D. S. v. United States*,

136 U. S. 1, 34 L. ed. 478, the Supreme Court declared: "The power to acquire territory . . . is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty, and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty."

Upon the conquest of a country the allegiance due by birth from its citizens or subjects to its sovereign passes, by operation of law, to the conqueror, who, as sovereign *de facto*, has a right to the allegiance of all who are subject to his power and submit to the protection of his arms. *Inglis v. Sailor's Snug Harbour*, 3 Pet. 99, 7 L. ed. 617; *Leitensdorfer v. Webb*, 20 How. 176.

The nationality of the inhabitants of territory acquired by conquest or cession becomes that of the government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal or otherwise, as may be provided. *Boyd v. Thayer*, 143 U. S. 135.

In the absence of express treaty stipulations or legislation by the conqueror, the relations between the conquered and the conqueror are determined by the law of nations, which establishes the general rule that the allegiance of the conquered is transferred to the new sovereign. 2 Halleck, *International Law*, 485.

B. Citizenship of Inhabitants of Conquered State.

The acquisition of territory by conquest by the United States does not operate to incorporate the inhabitants of the conquered territory as citizens of the conquering State. *Insular Cases*, 182 U. S. 300. The grounds upon which the court based its opinion are shown by the following quotation from the concurring opinion of Justices White, Shiras, and McKenna:

"It is insisted, . . . conceding the right of the government of the United States to acquire territory, as all such territory when acquired becomes absolutely incorporated into the United States, every provision of the Constitution which would apply under that situation is controlling in such acquired territory. This, however, is but to admit the power to acquire, and immediately to deny its beneficial existence.

"The general principle of the law of nations, . . . is that acquired territory, in the absence of agreement to the contrary, will bear such relation to the acquiring government as may be by it determined. To concede to the government of the United States the right to acquire, and to strip it of all power to protect the birthright of its own citizens and to provide for the well-being of the acquired territory by such enactments as may, in view of its condition, be essential, is, in effect, to say that the United States is helpless in the family of nations, and does not possess that authority which has at all times been treated as an incident of the right to acquire. Let me illustrate the accuracy of this statement. Take a case of discovery. Citizens of the United States discover an unknown island, peopled with an uncivilized race, yet rich in soil, and valuable to the United States for commercial and strategic reasons. Clearly, by the law of nations, the right to ratify such acquisition and thus to acquire the territory would pertain to the government of the United States. *Johnson v. M'Intosh*, 8 Wheat. 543, 595, 5 L. ed. 681, 694; *Martin v. Waddell*, 16 Pet. 367, 409, 10 L. ed. 997, 1012; *Jones v. United States*, 137 U. S. 202, 212, 34 L. ed. 691, 695, 11 Sup. Ct. Rep. 80; *Shively v. Bowlby*, 152 U. S. 1, 50, 38 L. ed. 331, 349, 14 Sup. Ct. Rep. 548. Can it be denied that such right could not be practically exercised if the result would be to endow the inhabitants with citizenship of the United States and to subject them, not only to local, but also to an

equal proportion of national taxes, even although the consequence would be to entail ruin on the discovered territory, and to inflict grave detriment on the United States, to arise both from the dislocation of its fiscal system and the immediate bestowal of citizenship on those absolutely unfit to receive it?

"The practice of the government has been otherwise. As early as 1856 Congress enacted the Guano Islands Act, . . . which by Sec. 1 provided that when any citizen of the United States shall 'discover a deposit of guano on any island, rock, or key not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and shall take peaceable possession thereof, and occupy the same, said island, rock, or key may, at the discretion of the President of the United States, be considered as appertaining to the United States.' 11 Stat. at L. 119, Chap. 164; Rev. Stat., Sec. 5570 [U. S. Comp. Stat. 1901, 3739]. Under the Act referred to, it was stated, in argument, that the government now holds and protects American citizens in the occupation of some seventy islands. The statute came under consideration in *Jones v. United States*, 137 U. S. 202 [34 L. ed. 691, 11 Sup. Ct. Rep. 80], where the question was whether or not the Act was valid, and it was decided that the Act was a lawful exercise of power, and that islands thus acquired were 'appurtenant' to the United States. The court, in the course of the opinion, speaking through Mr. Justice Gray, said, page 212 [L. ed. 695, Sup. Ct. Rep. 83]: 'By the law of nations, recognized by all civilized states, dominion of new territory may be acquired by discovery and occupation, as well as by cession or conquest; and when citizens or subjects of one nation, in its name and by its authority or with its assent, take and hold actual, continuous, and useful possession (although only for the purpose of carrying on a

particular business, such as catching and curing fish or working mines) of territory unoccupied by any other government or its citizens, the nation to which they belong may exercise such jurisdiction and for such period as it sees fit over territory so acquired. This principle affords ample warrant for the legislation of Congress concerning guano islands. . . .’

“And these considerations concerning discovery are equally applicable to ownership resulting from conquest. A just war is declared, and in its prosecution the territory of the enemy is invaded and occupied. Would not the war, even if waged successfully, be fraught with danger if the effect of occupation was to necessarily incorporate an alien and hostile people into the United States? Take another illustration. Suppose at the termination of a war the hostile government had been overthrown, and the entire territory or a portion thereof was occupied by the United States, and there was no government to treat with or none willing to cede by treaty, and thus it became necessary for the United States to hold the conquered country for an indefinite period, or at least until such time as Congress deemed that it should be either released or retained because it was apt for incorporation into the United States. If holding was to have the effect which is now claimed for it, would not the exercise of judgment respecting the retention be so fraught with danger to the American people that it could not be safely exercised?

“Yet again. Suppose the United States, in consequence of outrages perpetrated upon its citizens, was obliged to move its armies or send its fleets to obtain redress, and it came to pass that an expensive war resulted and culminated in the occupation of a portion of the territory of the enemy, and that the retention of such territory—an event illustrated by examples in history—could alone enable the United States to recover the pecuniary loss it had suffered. And suppose, further,

that to do so would require occupation for an indefinite period, dependent upon whether or not payment was made of the required indemnity. It being true that incorporation must necessarily follow the retention of the territory, it would result that the United States must abandon all hope of recouping itself for the loss suffered by the unjust war, and hence the whole burden would be entailed upon the people of the United States. This would be a necessary consequence, because if the United States did not hold the territory as security for the needed indemnity it could not collect such indemnity, and, on the other hand, if incorporation must follow from holding the territory the uniformity provision of the Constitution would prevent the assessment of the cost of the war solely upon the newly acquired country. In this, as in the case of discovery, the traditions and practices of the government demonstrate the unsoundness of the contention."

"In Brown's case, 5 Court of Claims, 571, the facts were that claimant, a former subject of the Kingdom of Hanover, brought suit before the Court of Claims as a Prussian subject to recover the proceeds of the sale of his cotton seized by the authorities of this government during our civil war. Subsequently to the time when the claim arose and before the bringing of the suit, Hanover had been incorporated by conquest in the Kingdom of Prussia. The law gives the Court of Claims jurisdiction of claims against the United States of aliens, 'citizens, or subjects of any government which accords to citizens of the United States the right to prosecute claims against such governments in their courts.' Under the law of Prussia aliens could prosecute claims against that government in its courts. In the opinion of the Court of Claims, which held that Brown was a Prussian subject, and hence capable of prosecuting his claim before the court, the court said:

" 'Hanover, *by conquest*, in 1866 became incorporated

in the Kingdom of Prussia. . . . When the territory and government of a kingdom pass to and become merged in the territory and government of another nation, all of its subjects pass also. The tie which binds and carries them is not bodily presence, but allegiance.’”

C. American *Ante-nati*.

All white persons, or persons of European descent, who were born in any of the colonies, or resided or had been adopted there, before 1776, and had adhered to the cause of independence up to July 4, 1776, were, by the Declaration, invested with the privileges of citizenship. *Inglis v. Sailor's Snug Harbour*, 3 Pet. 164, 7 L. ed. 640.

It is universally admitted, both in English courts and in those of our own country, that all persons born within the colonies of North America while subject to the Crown of Great Britain were natural-born British subjects, and it must necessarily follow that that character was changed by the separation of the colonies from the parent state, and the acknowledgment of their independence.

The rule as to the point of time at which the American *ante-nati* ceased to be British subjects differs in this country and in England, as established by the courts of justice in the respective countries. The English rule is to take the date of the Treaty of Peace, in 1783. Our rule is to take the date of the Declaration of Independence. The settled doctrine of this country is that a person born here, who left the country before the Declaration of Independence and never returned here, became thereby an alien. *Inglis v. Sailor's Snug Harbour*, 3 Pet. 99, 7 L. ed. 617.

By withdrawing from this country and adhering to the British government, the *ante-nati* lost, or, perhaps, more properly speaking, never acquired the character of American citizens. *Id.*

II. Naturalization by Treaty.

A. In General.

Collective naturalization is also effected by treaty.

Treaties of cession of territory, whether made as the result of military conquest or peaceful transfer, ordinarily contain stipulations determining the relations which the inhabitants of the ceded territory shall bear to the acquiring state.

B. Power of United States to Acquire Territory by Treaty and to Prescribe Terms Upon Which It Will Receive Inhabitants.

Justices White, Shiras, and McKenna, in their concurring opinion in the *Insular cases* (182 U. S., 300), said:

"It may not be doubted that, by the general principles of the law of nations, every government which is sovereign within its sphere of action possesses as an inherent attribute the power to acquire territory by discovery, *by agreement or treaty*, and by conquest. It can not also be gainsaid that, as a general rule, wherever a government acquires territory as a result of any of the modes above stated, the relation of the territory to the new government is to be determined by the acquiring power in the absence of stipulations upon the subject. These general principles of the law of nations are thus stated by Halleck in his treatise on International Law, page 126: 'A state may acquire property or domain in various ways; its title may be acquired originally by mere occupancy, and confirmed by the presumption arising from the lapse of time; or by discovery and lawful possession; or by conquest, confirmed by treaty or tacit consent; or by grant, cession, purchase or exchange; in fine, by any of the recognized modes by which private property is acquired by individuals. It is not our object to enter into any general discussion of these several modes of

acquisition, any further than may be necessary to distinguish the character of certain rights of property which are the peculiar objects of international jurisprudence.

“In *American Ins. Co. v. Canter*, 1 Pet. 511 [7 L. ed. 242], the general doctrine was thus summarized in the opinion delivered by Mr. Chief Justice Marshall, page 542 [L. ed. 255]: ‘If it (conquered territory) be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose.’

“When our forefathers threw off their allegiance to Great Britain and established a republican government, assuredly they deemed that the nation which they called into being was endowed with those general powers to acquire territory which all independent governments in virtue of their sovereignty enjoyed. This is demonstrated by the concluding paragraph of the Declaration of Independence, which reads as follows: ‘As free and independent states, they [the United States of America] have full power to levy war, *conclude peace*, contract alliances, establish commerce, *and to do all other acts and things which independent states may of right do.*’

“That under the Confederation it was considered that the government of the United States had authority to acquire territory like any other sovereignty is clearly established by the 11th of the Articles of Confederation.

“The decisions of this court leave no room for question that, under the Constitution, the government of the United States, in virtue of its sovereignty, supreme within the sphere of its delegated power, has the full right to acquire territory enjoyed by every other sovereign nation.

“In *American Ins. Co. v. Canter*, 1 Pet. 511 [7 L. ed. 242], the court, by Mr. Chief Justice Marshall, said

page 542 [L. ed. 255]: 'The Constitution confers absolutely on the government of the Union the powers of making war and of *making treaties*; consequently, that government possesses the power of acquiring territory, either by conquest or *by treaty*.'

"In *United States v. Huckabee* (1872), 16 Wall. 414 [21 L. ed. 457], the court, speaking through Mr. Justice Clifford, said, page 434 [L. ed. 464]: '*Power to acquire territory* either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined; but if the nation is entirely subdued, or in case it be destroyed and ceases to exist, the right of occupation becomes permanent, and the title vests absolutely in the conqueror. . . . Complete conquest, by whatever mode it may be perfected, carries with it all the rights of the former government; or, in other words, the conqueror, by the completion of his conquest, becomes the absolute owner of the property conquered from the enemy nation or state. His rights are no longer limited to mere occupation of what he has taken into his actual possession, but they extend to all the property and rights of the conquered state, including even debts as well as personal and real property. Halleck, *International Law*, 839; *Elphinstone v. Bedreechund*, 1 Knapp P. C. C. 329; Vattel, 365; 3 Philimore, *International Law*, 505.' "

For a further quotation from the opinion of the court in this case see pp. 295 et seq, post.

C. Treaties of Cession to which United States has been a Party.

a. In General.

Every treaty of cession to which the United States has been a party, with the exception of the treaty of peace of 1898 (30 Stat. at L. 1754), with Spain, ceding Porto

Rico and the Philippine Islands to the United States, contains a stipulation providing that the inhabitants of the territory ceded may, in whole or in part, become citizens of the United States, either immediately or under certain conditions.

The treaty with Russia for the cession of Alaska (15 Stat. at L. 542) excepted "uncivilized native tribes" from the privilege of admission to citizenship.

The pertinent provisions of these several treaties are set out below, together with concrete cases in which they have been construed by the courts or international claims commissions.

b. Treaty of 1794 with Great Britain.

Under the 2d article of the treaty of 1794 (8 Stat. at L. 116), between the United States and Great Britain, British subjects who resided at Detroit before and at the time of the evacuation of the territory of Michigan, and who continued to reside there afterwards without at any time prior to the expiration of one year from such evacuation declaring their intention of remaining British subjects, became, *ipso facto*, to all intents and purposes American citizens. *Crane v. Reeder*, 25 Mich. 303.

c. Treaty of 1803 with France.

By Article 3 of the Treaty of Paris of 1803 (8 Stat. at L. 200), ceding Louisiana to the United States, it was provided that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

1. Case of Egle Aubry.

Egle Aubry, a person of color, presented to the commission under the convention between the United States and France of January 15, 1880 (21 Stat. at L. 673), a

memorial in which, in the character of a citizen of France, she claimed damages from the United States for the occupation of buildings by General Grover in the parish of St. Tammany, Louisiana, in February, 1864. In this memorial it was set forth, as the ground of the claimant's French citizenship, that she was born in the territory of Orleans, January 3, 1803, while that territory was a French colony.

Counsel for the United States demurred on the ground that, as the claimant was an inhabitant of the territory in question when it was ceded by France to the United States by the treaty of April 30, 1803 (8 Stat. at L. 200), she thereby became a citizen of the United States, inasmuch as the treaty of cession transferred to the United States full and complete jurisdiction over the inhabitants resident upon the territory without any reservation whatever on the part of the French government. In support of this position, counsel cited Wheaton's *International Law*, 6th ed., 627, where, in treating of "collective naturalization," the author mentions the convention of April 30, 1803.

Counsel for the memorialist relied upon the third article of the treaty, which is in these words: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

As memorialist was a person of color, whose citizenship was not recognized by the United States till the ratification of the Fourteenth Amendment, her counsel contended that she had not, at the time her claim arose, enjoyed the advantages and immunities of a citizen of

the United States, but that she remained a citizen of France, and as such was entitled to be "maintained and protected" in the "free enjoyment" of her "liberty, property, and religion." In support of this position he cited the case of one Decuir, whose father, a free negro, was an inhabitant of the territory of Louisiana when it was ceded to the United States. The son, having been impressed into the Confederate service, was discharged by the superior court of Alexandria on a writ of habeas corpus upon the ground that he was not a citizen of Louisiana, and, consequently, that he was protected as a French subject under the third article of the treaty of 1803.

Upon the issues thus presented, the demurrer was sustained by the following decision of the Commission: "The claimant, Egle Aubry, a colored woman, was born on the 3d day of January, 1803, in the territory of Louisiana, then a French colony, and therefore was by birth a citizen of France. On the 30th day of April, 1803, the territory of Louisiana was, by treaty, ceded by France to the United States. The treaty 'cedes to the United States forever and in full sovereignty the territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic in virtue of the treaty with Spain.' Spain had ceded the territory to France in October, 1801, and the cession did not affect slavery, which then existed there. The treaty of cession contains no provision by which the inhabitants could remain, or by their option choose to remain, French citizens. On the contrary, the third article of the treaty obviously contemplates that they were to be American citizens. Article 3 of the treaty is as follows: [Here follows the article as above quoted.] There is nothing in the treaty, therefore, to indicate that it was the intention, either of France, or of the United States, that the inhabitants, or any of them, were

to remain citizens of France. On the contrary, it was intended that they should be citizens of the United States. The demurrer is sustained, and the claim is disallowed." 3 Moore's International Arbitrations, 2511 *et seq.*

2. Case of Foucher.

A claim against the United States, for the seizure and destruction of property by military authorities, was made before the same Commission in behalf of the heirs of Louis Frederick Foucher Marquis de Circé, who died in France in 1869. It appeared that Foucher was born in 1798 in New Orleans, province of Louisiana, then a possession of Spain, and that he was residing there with his father in 1803, when the territory of Louisiana was ceded by France to the United States. He remained at New Orleans till 1836, when he removed to France, where he continued to reside till his decease. In France he exercised the rights and enjoyed the privileges of a citizen, owned a chateau, and assumed his inherited title; but there was no evidence of record that he was ever reinstated or naturalized in conformity with the French Code.

It was claimed by counsel for the United States, on the authority of the decision of the commission in the case of Egle Aubry (*supra*), that Foucher became a citizen of the United States by the treaty of cession in 1803; that his residence in France, even with the attending circumstances, did not entitle him to be considered a citizen of that country; and that consequently the commission could not take jurisdiction of the case; but it was admitted that the Supreme Court of the state of Louisiana, in a case entitled De Circé's Succession, 41 La. Ann. 506, 6 So. 812, had held that he was, at the time of his death, a French citizen within the meaning of both the French law and the law of Louisiana.

Counsel for the French Republic maintained that,

inasmuch as the father of Louis Frederick Foucher was born in Louisiana when that province was within the jurisdiction of France, his descendant, Louis Frederick Foucher, was a citizen of France, and not affected by the cession of the territory of Louisiana by France to Spain, then by Spain to France, then by France to the United States. It was also claimed by counsel for the French Republic that the opinions of certain French lawyers, whose words were quoted in the brief, should be accepted as the evidence of experts in regard to the law of France. M. HARRISSE, speaking of the French law, said: "Citizenship is conferred in the forms given in my first cross-interrogatory. It is evidenced by public notoriety and enjoyment and practice of certain political rights which are conferred on French citizens only, such as the registry of voting at elections or inscription on the electoral lists. But, as the law does not prescribe the rules of evidence for such cases, it springs from circumstances." The certificate of the minister of the interior was also relied upon. He said, in substance, that Louis Frederick Foucher, Marquis de Circé, born at New Orleans, had been, in view of the evidence produced, considered to be French and inscribed on the electoral list of the seventh *arrondissement* of Paris for the years 1864 to 1869, and that his inscription on that list established, until the contrary was proved, that he was French. M. JASON, a French lawyer, who was examined as an expert, said: "I consider the French nationality of Louis Frederick Foucher, Marquis de Circé, as proved, first, by the judgment of the tribunal of the Seine of April 11, A. D. 1851, ordering the rectification of the birth certificate of his son, and the addition of the name of Circé, which had been omitted—an addition which the tribunal could order only after the Marquis de Circé had established his quality of French citizen; second, by the inscription of L. F. Foucher de Circé on the electoral lists of the seventh

arrondissement on presentation to the competent municipal officers of documents establishing his quality of French citizen."

The commission unanimously awarded \$9,200. Counsel for the United States in his final report, referring to this award, said: "This act was a recognition of the citizenship of Foucher in France; but whether the conclusion was reached upon the ground that the father of Foucher was a citizen of France and that the son, although born in the territory of Louisiana, then a province of Spain, followed the condition of his father, or whether the commission were of opinion that the removal of Foucher to France in 1836, and his continuous residence there for a third of a century and during his life, coupled with the fact that he was recognized as a citizen of France, although formal proceedings, as required by articles 9 and 10 of the French Code, had not been complied with, justified the conclusion, legally, that he was a citizen of France, does not appear." Arthur Denis, Testamentary Executor of L. F. Foucher, *Marquis de Circé v. United States*, 3 Moore, *International Arbitrations*, 2512 *et seq.*

3. Case of De Baca.

Neither the treaty of 1800 between Spain and France, nor that of 1803 (8 Stat. at L. 200), between France and the United States, ceding "the colony or province of Louisiana," definitely fixed the boundaries of that colony or province. A dispute arose between the United States and Spain on this subject. The United States contended that the Rio Grande River was the western boundary of the territory ceded, but Spain controverted this. After a lengthy correspondence, the differences between the two governments were settled by the treaty of February 22, 1819 (8 Stat. at L. 252), by which the United States acquired East and West Florida, and renounced all its

rights, claims, and pretensions to the territories lying west and north of a line beginning at the mouth of the Sabine River and running north and west in the manner described in the treaty.

In the case of *De Baca v. United States*, 37 Ct. Cl. 482, it appears that Sandoval, claimant's decedent, was born of Spanish parents in 1809 in Sante Fé, in the territory of New Mexico (within the territory described above to which the United States renounced all its rights, claims, and pretensions), and continued to reside there until his death in 1862. It was contended by the claimant that decedent acquired citizenship in the United States under article 3 of the treaty of 1803, between the United States and France, which entitled inhabitants of the ceded territory to "be incorporated in the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." The court held that the disputed territory was not acquired by cession from France, citing in support of that view the provision of article 6 of the treaty of 1819, between the United States and Spain, which provides that the inhabitants of the territories which His Catholic Majesty cedes to the United States by this treaty shall be "incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States." "There is no provision in the treaty," says the court, "with reference to the citizenship of the inhabitants in the disputed territory, thus indicating to our minds that such territory had not, up to that time, ceased to be Spanish territory, and for that reason no provision was necessary concerning their citizenship under the Spanish government."

The court's conclusion was that it could not regard these treaties as affecting or changing the citizenship of any person dwelling within the limits of the disputed territory; that Spaniards continued to be Spaniards, and Americans continued to be Americans, and their children were of the citizenship of their parents. The court called attention to the fact that the inhabitants of Santa Fé were universally regarded as Spaniards or Mexicans, until the United States acquired that territory by treaty; and that the treaty of Guadalupe-Hidalgo recognized all of these inhabitants as Mexican citizens, and made provision for their remaining such or becoming citizens of the United States at their own election.

The decision of the court was that claimant's decedent was born a subject of Spain, and did not become a citizen of the United States until the expiration of the year prescribed by the treaty of Guadalupe-Hidalgo—that is, one year from the date of the exchange of ratifications of the treaty, which took place May 30, 1848 (9 Stat. at L. 922.)

d. Treaty of 1819, with Spain.

The treaty of 1819 (8 Stat. at L. 252), art. 6, with Spain, ceding Florida to the United States, provided that the inhabitants of the ceded territory "shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States."

In the case of *American Ins. Co. v. Canter*, 1 Pet. 511, 7 L. ed. 242, Chief Justice Marshall said: "This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation. They do

not, however, participate in political power; they do not share in the government till Florida shall become a state."

In *Tannis v. Doe ex dem. St. Cyre*, 21 Ala. 449, it was held by the Supreme Court of Alabama, in 1852, that a free negro, who was an inhabitant of Florida at the date of the treaty by which Spain ceded that territory to the United States, lost the character of an alien by the operation of that treaty. See, also, *Boyd v. Thayer*, 143 U. S. 135.

e. Treaty of February 2, 1848, with Mexico.

The Treaty of Guadalupe-Hidalgo, signed February 2, 1848 (9 Stat. at L. 922), effected a collective naturalization of all (Mexicans) inhabitants of California and other territory ceded by that treaty who remained in and adhered to the United States. Article 8 of the treaty provided that "Mexicans now established in territories previously belonging to Mexico;" and which were to "remain for the future within the limits of the United States, as defined by the present treaty," should, if remaining in such territories, elect within a year from the date of the exchange of the ratifications of the treaty whether they would "retain the title and rights of Mexican citizens, or acquire those of citizens of the United States," but that those who remained "in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans," should "be considered to have elected to become citizens of the United States."

Under the provision of this treaty that Mexicans residing in the ceded territory should acquire United States citizenship, it was decided, in *United States v. Lucero*, 1 N. Mex. 422, that Pueblo Indians, who were "Mexicans," under Mexican law, became citizens of the

United States. See, also, *U. S. v. Santistevan*, 1 New Mex. 583.

The 8th section of the treaty is inapplicable to persons who, before the revolution in Texas, had been citizens of Mexico, and who, by that revolution, had been separated from it. *McKinney v. Saviego*, 18 How. 235, 15 L. ed. 365.

Two claimants, natives of Mexico, who had remained in New Mexico after the ratification of the treaty without having indicated an election to "retain the title and rights of Mexican citizens," complained of acts committed by the authorities of the United States prior to the date of the conclusion of the treaty. It was held by the commissioners, without reference of the question to the umpire, that the claimants in question had no standing as Mexicans before the commission. *Melquiades and Josefa Chavez v. United States*, United States and Mexican Claims Commission, Convention of July 4, 1868, 15 Stat. at L. 679, Moore, International Arbitrations, 2510.

A., a native of Mexico, where he was born in 1833, was taken by his father, in 1851, to California, whither the latter had gone in March, 1848. It was held by the Commissioners that the phrase, "Mexicans now established," as employed in article 8 of the treaty of Guadalupe-Hidalgo, applied only to those who were established in the ceded territories at the date of the conclusion of the treaty, and not to those who came subsequently; and that neither the father, nor consequently the son through him, acquired, under the treaty, the citizenship of the United States. *Jesus M. Ainsa v. Mexico*, United States and Mexican Claims Commission, Convention of July 4, 1868, 15 Stat. at L. 679, 3 Moore, International Arbitrations, 2510.

The constitution of California of October 1, 1849, Art. 2, Sec. 1, provided: "Every white male citizen of the

United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro on the 30th day of May, 1848 [9 Stat. at L. 922], of the age of 21 years, who shall have been a resident of the state six months next preceding the day of the election, and of the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law." The Commissioners held that neither this article, nor anything in the Act of Congress admitting California into the Union, helped claimant's case.

"The umpire considers that the claimant must be considered to be a Mexican citizen, the contrary not having been proved by the defense. The witnesses testify that he was born in Mexico, and it is not shown that he had divested himself of that nationality. The umpire does not think that article 8 of the treaty of Guadalupe-Hidalgo applied to the claimant, though he might have been a resident of Texas at the time of the conclusion of that treaty and for a year afterward. Texas was not, in the meaning of that article, one of the territories previously belonging to Mexico, and which remained for the future within the limits of the United States. Texas had been independent since 1836, and a state of the Union since 1845. It was claimed by the United States that the strip of territory between the rivers Nueces and Bravo was a part of Texas, and had always been so. It must therefore be supposed, nothing to the contrary having been proved, that the claimant was a Mexican citizen residing in Texas." Thornton, Umpire, July 7, 1876, Convention of July 4, 1868, 15 Stat. at L. 679; *Agapito Longoria v. United States*, United States and Mexican Claims Commission, 3 Moore, International Arbitrations, 2510, 2511.

The right of election secured to Mexican citizens of the territory of New Mexico by the treaty with Mexico, to retain their citizenship or to become American citizens, was not required to be exercised in any particular mode, but could be exercised and proved in any manner appropriate to the nature of the case. A declaration of intention by a Mexican citizen to retain Mexican citizenship, by signing his name to a list authorized to be kept by the clerks of the prefects' courts by a proclamation of the military governor of New Mexico, is a sufficient exercise of such right of election, and is not affected by a subsequently declared intention to withdraw such signature, which is not shown to have been acted on. *Quintana v. Tomkins*, 1 N. M. 29.

A declaration of intention to retain Mexican citizenship, made before a probate court, in accordance with the proclamation above referred to, was a binding and valid exercise of the right of election reserved to Mexican residents of the territory of New Mexico by Article 8 of the treaty of Guadalupe-Hidalgo (9 Stat. at L. 922). *Carter v. Territory*, 1 N. M. 317.

In the case of *Tobin v. Walkinshaw*, McAll. 186, Fed. Cas. No. 14,070, the United States Circuit Court held that the principle that the allegiance of the inhabitants of territory ceded is transferred with the territory, unless the treaty of cession provides otherwise, applies only to natural-born citizens of the country making the cession. In this case one Forbes, a native of Great Britain, was, at the date of the treaty of Guadalupe-Hidalgo, a naturalized citizen of Mexico. He continued to reside in California after the execution of the treaty, and never made any declaration of intention to retain the rights of a Mexican citizen. It was contended that these facts, with the subsequent admission of California into the Union, fixed at once and by mere operation of

law the status of American citizenship upon him. The treaty stipulated, as to those Mexicans who should prefer to remain in the ceded territory, that they might either retain the title and rights of Mexican citizens, or acquire those of American citizens; but declared that they should be under the obligation to make their election within one year from the date of the exchange of the ratifications of the treaty, and those who should remain after the expiration of that year, without having declared their intention to retain the character of Mexican citizens, should be considered to have elected to become citizens of the United States. The court said that birth binds man by the tie of natural allegiance to his native soil, and such allegiance gives to the country in which he was born the right to transfer this natural allegiance, subject, however, to the right of election in the party whether he will retain his allegiance to his old sovereign, or pay allegiance to the new. Said the court: "The object of the treaty of Guadalupe-Hidalgo was to regulate the exercise of this right of election by such parties as by the principles of international law were subject to their jurisdiction as contracting parties. The Mexican government stipulated for a right for Mexicans residing in the territory to elect at any time within a year after the date of the treaty to retain their title and rights as Mexicans; the government of the United States guarded against the abuse of the right, by limiting the time within which it was to be executed, and stipulating that, if the election was not made within the time limited, they should be considered as having elected to become citizens of the United States. The right of the two governments thus to stipulate in relation to native-born Mexicans, under the law of nations, is unquestionable. It was evidently proper that the status of all such should be fixed. If

they were neither to continue Mexican citizens, nor become citizens of the United States, a whole people would become disfranchised. They would have no status as citizens, owe no allegiance, and be left in the anomalous position of a people without a country. Not so with the defendant Forbes. So soon as he had been released from the voluntary allegiance to Mexico, he was remitted to his original status. No power existed in one government to transfer, or in the other to receive, the voluntary or statutory allegiance of a naturalized citizen. Neither had the right to say to such, 'You shall continue your allegiance to Mexico, although she has conveyed it away; or you shall become a citizen of the United States.' The allegiance of the naturalized citizen is the offspring of municipal law. Unlike natural allegiance, its support does not rest upon the law of nature and the code of nations. The only relations that Mexico or the United States could change were those arising from those sources. Nor does the language of the treaty authorize the conclusion that the contracting parties intended to include within the word 'Mexicans' naturalized citizens of foreign countries. . . . In the 8th article of the treaty of Guadalupe Hidalgo, Mexicans are only mentioned as entitled to the rights of election. The whole of this article refers to Mexicans; and the 9th article speaks of 'Mexicans' only, and provides that those who do not preserve the character of Mexican citizens shall be subsequently incorporated into and become entitled to all the rights of citizens of the United States. Naturalized citizens are nowhere included, *eo nomine*, within the provisions of the treaty, and, in the opinion of the court, it was not intended to include them. This construction of the treaty is sought to be defeated by the assumption that the change in the political relations of the inhabitants of the ceded territory was contemplated

to be made by the treaty with their consent by giving to them the right of election; hence, that it is to be reasonably concluded that naturalized citizens were intended to be included in the term 'Mexicans.' The answer is, first, it is a violence to the language of the treaty so to construe it; secondly, the allegiance of the naturalized citizen was not a subject of transfer between the contracting parties; and thirdly, the argument surrenders the whole question, because if the defendant was included in the treaty, his consent was essential to entitle him to exercise the right of election. . . . But, in the opinion of the court, the election was given only to Mexicans who remained in the ceded territory longer than one year after the date of the treaty, who were during that interval to elect to retain Mexican rights or be considered citizens of the United States. Both governments had the right so to negotiate in regard to Mexicans; but in relation to the defendant, Forbes, a naturalized citizen, his voluntary allegiance might be released by Mexico—not transferred. On his release he was remitted to his original status of a British subject, derived from his birth, and the courts know no principle of law which would authorize the Government of the United States to compel the transfer of the defendant's voluntary allegiance from Mexico to themselves. The contracting parties did not intend to do so. The court considering the defendant without the provisions of the treaty, his claim to be a citizen of the United States under them can not be sustained; and he stood at the execution of the treaty, and now stands, where his acts and declarations and original status have placed him—an alien, and subject of Great Britain."

A subject of a foreign state, residing in the State of Texas at the time of its admission to the Union, did not thereby become a citizen of the United States. *Coutzen v. United States*, 33 Ct. Cl. 475.

A person born in Texas, and removing therefrom before the separation from Mexico, remains a citizen of Mexico, though a minor when the separation took place. *Jones v. McMasters*, 20 How. 8, 15 L. ed. 805.

In the case of *Masson v. Mexico* (American and Mexican Claims Commission, Convention of 1868, 15 Stat. at L. 679), claimant stated that he emigrated from France to the Republic of Texas in 1844, and continued to reside there until the annexation of that republic to the United States and its incorporation into the Union. He asserted that he thereby became a citizen of the United States. The umpire held that, to have become a citizen of the United States by virtue of the annexation of Texas, the claimant must have first been a citizen of the Republic of Texas, and, as it was not found that he went through the forms required to acquire that citizenship, his claim to American citizenship was not established. 3 Moore, International Arbitrations, 2542, 2543.

f. Treaty of December 30, 1853, with Mexico (Gadsden Treaty).

Article 5 of the Gadsden treaty, signed December 30, 1853 (10 Stat. at L. 1031), declared that the provisions of article 8 of the treaty of Guadalupe-Hidalgo (9 Stat. at L. 922) relative to the inhabitants of the ceded territory should apply to the territory ceded by the Gadsden treaty. The Mexican inhabitants of the territory referred to (Arizona) who adhered to and remained in the United States thereby became citizens of the United States.

g. Treaty of 1867 with Russia.

The treaty of 1867 with Russia, ceding Alaska to the United States, gave the inhabitants of the ceded territory the privilege of reserving their Russian allegiance and returning to Russia within three years. It was provided that those remaining there (with the exception of

uncivilized native tribes) should be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States.

The treaty provision (art. 3) reads as follows: "The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but, if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country." 15 Stat. at L. 542. See *Rasmussen v. U. S.*, 197 U. S. 516.*

*The following report from Moore's International Arbitrations of an interesting case which came before a claims commission to which the United States was a party, is given:

Henriette Levy, widow of Jacob Levy, and a native of Alsace, filed, in her own right, and as tutrix of her six minor children, a memorial before the commission under the treaty between the United States and France of January 15, 1880 (21 Stat at L. 673), for damages for the seizure of cotton by the United States forces in Louisiana in 1863. The cotton in question belonged to the firm of Isaac Levy & Co., then doing business in Louisiana. This firm was composed of Jacob Levy and Isaac Levy, citizens of France, and Marx Levy and Benjamin Weil, citizens of the United States. In 1866 Jacob Levy purchased the interests of Marx Levy and Benjamin Weil in the property and assets of the firm, and subsequently removed to Strasburg, in Alsace, then in the jurisdiction of France, where he died March 1, 1871. The memorial filed by Henriette Levy embraced both the original and the acquired interest of Jacob Levy in the property and assets of the firm.

On this state of facts counsel for the United States demurred to the memorial, on the following grounds: "1. As to the whole case: That it appears that the claimant and her children, about the year 1871, became citizens or subjects of Germany, and have ever since remained and are now such citizens or subjects, and have not since that year been citizens of the Republic of France, and that this claim is, therefore, not presented by or on behalf of the citizens of that Republic. 2. As to the

h. Treaty of 1898, with Spain.

The treaty of Paris of December 10, 1898 (30 Stat. at L. 1754), which terminated the late war between the United States and Spain and by which Spain ceded Porto Rico and the Philippine Islands to the United States, provided (art. 9) that Spanish subjects, natives of the Peninsula, residing in the territory ceded, might preserve

interest alleged to have been assigned by Benjamin Weil: That as it appears that said Weil was at the time of the acts complained of a citizen of the United States, the claim is not one arising out of acts committed against the persons or property of citizens of France."

In support of so much of the demurrer as related to the claim derived from Benjamin Weil, counsel for the United States referred to the case of Archbishop Perché.

In support of the demurrer to the whole case counsel for the United States invoked the treaty of Frankfort of May 10, 1871, by which Alsace was ceded to Germany. By article 2 of this treaty it was provided that French subjects, born in the ceded territory and actually domiciled therein, who desired to preserve their French nationality, should be allowed till October 1, 1872, to declare their intention to do so, before competent authority, and to remove their domicil to France.

As there was no allegation in the memorial that Henriette Levy had availed herself of this privilege, counsel for the United States maintained that it was a reasonable presumption that she had omitted to do so, and had in consequence become a German subject. Counsel cited in this relation the case of Archbishop Perché, and moved that the memorialist be required to amend her memorial and state whether she had availed herself of the privilege secured by article 2 of the treaty of Frankfort. He further moved that in default of such a statement the case be dismissed.

Special counsel for the memorialist contended (1) that the case was not analogous to that of Archbishop Perché, since in that case the claimant had voluntarily renounced his allegiance to France and become a citizen of the United States; while Jacob Levy, the husband of Henriette Levy, was born in France, lived in France, and died a citizen of France; and (2) that as Jacob Levy was a citizen of France when the loss was sustained and continued to be a citizen of France during his life, the claim was by a citizen of France, and that the commission should take and maintain jurisdiction. In support of this position the 1st, 2d, and 4th articles of the treaty were quoted. The attention of the commission was also called to the 7th article of the treaty of February 23, 1853 (10 Stat. at L. 996), between France and the United States, in which it is provided that: "Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States. They shall be free to dispose of it as they may please,

their allegiance to Spain by making, before a court of record, within a year from the date of the exchange of ratifications of the said treaty, a declaration of their decision to preserve such allegiance. The treaty declared that in default of such declaration they should be held to have renounced such allegiance and to have adopted the nationality of the territory in which they resided.

either gratuitously or for value received, by donation, testament, or otherwise, just as those citizens themselves ; and in no case shall they be subject to taxes on transfer, inheritance, or any others different from those paid by the latter."

It was also contended that any change in the nationality of the country of their nativity could not affect the rights acquired by the heirs of Jacob Levy while the country was an integral part of France and they were citizens thereof ; that the repeal of a law, or change of a treaty, or a cession of territorial domain subsequent to the date when the right of inheritance attached could not affect any right acquired under the treaty or such law or cession of territory. Several authorities were cited in the brief in support of these positions, and especially the decision of the Supreme Court of the United States in the case of *Dawson v. Godfrey*, 4 Cranch, 321, 2 L. ed. 634. It was also claimed by counsel for the memorialist that the nationality of the father was transmitted to his minor children ; that neither the mother nor guardian could change it during their minority ; that when the minors attained their majority they had the right to elect whether they would adhere to the country to which their father owed allegiance at the date of his death, and that until that period arrived they continued citizens of France. The cession of Alsace, it was alleged, did not affect in any particular the private rights of the citizens to property or claims for injuries committed prior to the cession.

Counsel for the United States, in reply to the contention of private counsel that there was no analogy between the case of *Perché* and the case at bar, maintained that the question for the commission to consider was one solely of the fact of citizenship ; that the motive or reason or the attending circumstances in the case of a change of nationality ought not to be considered, and could properly have no weight ; that, assuming the position of counsel for the claimant to be a tenable one, it was true that she had the option tendered to her by the treaty of 1871 ; but that she was then called upon to make her choice, either to remain in Germany and become a subject of the German Empire or to accept the privileges of the treaty and retain her citizenship in France. She chose to remain in the German Empire, and thus voluntarily fixed her character as a German subject.

The Commission sustained the demurrer in these words : " The commission, in this case, judges well-founded, and admits the demurre

The treaty (art. 9) further provided that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

It will be observed that this treaty, unlike previous treaties of cession to which the United States has been a party, makes no provision for the incorporation of the

interposed by the agent of the United States to the claim or memorial. In its opinion, it is beyond doubt that the claimant and her children, being natives of Alsace and having always resided there, and not having made choice of the French nationality during the interim granted by the treaty of May 10th, 1871 (which applied to persons of full age as well as to minors), are included in the collective naturalization, real as well as personal, which resulted to that country in consequence of its annexation to the German Empire, sanctioned by that treaty. And as German subjects, which they have become, they can not in any manner have recourse to a commission created solely for the settlement of certain claims of French or American citizens. The French nationality of Jacob Levy, whose rights the claimant and her children have inherited, can not be included in this inheritance. Possessed by him alone, it does not satisfy the requirements of the convention, which demands French nationality in those who actually present themselves before the commission. Benjamin Weil and Marx Levy never having been French, the rights which they transferred to Jacob Levy can not, *a fortiori*, be taken into consideration, nor can they render any better the legal condition of the claimant and her children. For these reasons the commission sustains the demurrer of the United States counsel, and declares the claim outside of its jurisdiction."

The judgment of the commission sustaining the demurrer was dated the 25th of June, 1881. The 20th of September, 1881, the claimant, by her attorney, filed an amendment to the memorial, in which she declared that she and her minor children were then residents and citizens of France, and that her post-office address at that time was in Paris, France. Documentary evidence was also produced, showing that Henriette Levy, the claimant, was, upon a proper application to the authorities of France, reinstated as a French subject on the 3d of June, 1882.

Counsel for the United States maintained that the amendment was, in effect, an admission that Henriette Levy and her minor children were subjects of Germany at the time the treaty was ratified, and that citizenship in France, acquired after the date of the treaty, could not give jurisdiction to the commission over parties so acquiring citizenship.

The case was dismissed finally for want of jurisdiction.

Boutwell's Report, 65, French and American Claims Commission, Convention of January 15, 1880, 21 Stat. at L. 673; 3 Moore's Int. Arbitrations, 2514 *et seq.*

inhabitants of the ceded territory as citizens of the United States. It expressly declares that the civil rights and political status of the native inhabitants shall be determined by the Congress.

The contention was advanced by those who were opposed to the acquisition of Porto Rico and the Philippine Islands that the United States has no power, in acquiring and governing territory, to provide against the incorporation of the inhabitants of the acquired territory as citizens of the United States. They contended that the inhabitants of the territory ceded to the United States by Spain became, immediately upon annexation, citizens of the United States.

1. Insular Cases: Decisions of Supreme Court.

The Supreme Court of the United States, in the Insular Cases, 182 U. S. 1-391, 45 L. ed. 1041-1146, 21 Sup. Ct. Rep. 742-827, declared, however, that this government, in acquiring territory, has power to prescribe the terms upon which it will receive the inhabitants; and, in the concurring opinion of Justices White, Shiras, and McKenna, it was held that where a treaty of cession contains provisions against the incorporation of the inhabitants as citizens, incorporation does not take place until, in the wisdom of Congress, it is deemed that the acquired territory has reached a condition where it is proper that it should enter into and form a part of the American family.

In their concurring opinion (182 U. S. 300), Justices White, Shiras, and McKenna said:

“ . . . Let me . . . eliminate the case of war, and consider the treaty-making power as subserving the purposes of the peaceful evolution of national life. Suppose the necessity of acquiring a naval station or a coaling station on an island inhabited with people utterly unfit

for American citizenship and totally incapable of bearing their proportionate burden of the national expense. Could such island, under the rule which is now insisted upon, be taken? Suppose, again, the acquisition of territory for an interoceanic canal, where an inhabited strip of land on either side is essential to the United States for the preservation of the work. Can it be denied that, if the requirements of the Constitution as to taxation are to immediately control, it might be impossible by treaty to accomplish the desired result?

“Whilst no particular provision of the Constitution is referred to, to sustain the argument that it is impossible to acquire territory by treaty without immediate and absolute incorporation, it is said that the spirit of the Constitution excludes the conception of property or dependencies possessed by the United States and which are not so completely incorporated as to be in all respects a part of the United States; that the theory upon which the Constitution proceeds is that of confederated and independent states, and that no territory, therefore, can be acquired which does not contemplate statehood, and excludes the acquisition of any territory which is not in a position to be treated as an integral part of the United States. But this reasoning is based on political, and not judicial, considerations. Conceding that the conception upon which the Constitution proceeds is that no territory, as a general rule, should be acquired unless the territory may reasonably be expected to be worthy of statehood, the determination of when such blessing is to be bestowed is wholly a political question, and the aid of the judiciary can not be invoked to usurp political discretion in order to save the Constitution from imaginary, or even real, dangers. The Constitution may not be saved by destroying its fundamental limitations.

“Let me come, however, to a consideration of the

express powers which are conferred by the Constitution, to show how unwarranted is the principle of immediate incorporation, which is here so strenuously insisted on. In doing so it is conceded at once that the true rule of construction is not to consider one provision of the Constitution alone, but to contemplate all, and therefore to limit one conceded attribute by those qualifications which naturally result from the other powers granted by that instrument, so that the whole may be interpreted by the spirit which vivifies, and not by the letter which killeth. Undoubtedly, the power to carry on war and to make treaties implies also the exercise of those incidents which ordinarily inhere in them. Indeed, in view of the rule of construction which I have just conceded—that all powers conferred by the Constitution must be interpreted with reference to the nature of the government, and be construed in harmony with related provisions of the Constitution—it seems to me impossible to conceive that the treaty-making power by a mere cession can incorporate an alien people into the United States without the express or implied approval of Congress. And from this it must follow that there can be no foundation for the assertion that, where the treaty-making power has inserted conditions which preclude incorporation until Congress has acted in respect thereto, such conditions are void and incorporation results in spite thereof. If the treaty-making power can absolutely, without the consent of Congress, incorporate territory, and if that power may not insert conditions against incorporation, it must follow that the treaty-making power is endowed by the Constitution with the most unlimited right, susceptible of destroying every other provision of the Constitution; that is, it may wreck our institutions. If the proposition be true, then millions of inhabitants of alien territory, if acquired by treaty, can, without the desire

or consent of the people of the United States speaking through Congress, be immediately and irrevocably incorporated into the United States, and the whole structure of the government be overthrown. While thus aggrandizing the treaty-making power on the one hand, the construction at the same time minimizes it on the other, in that it strips that authority of any right to acquire territory upon any condition which would guard the people of the United States from the evil of immediate incorporation. The treaty-making power, then, under this contention, instead of having the symmetrical functions which belong to it from its very nature, becomes distorted—vested with the right to destroy upon the one hand, and deprived of all power to protect the government on the other.

“And, looked at from another point of view, the effect of the principle asserted is equally antagonistic, not only to the express provisions, but to the spirit of the Constitution in other respects. Thus, if it be true that the treaty-making power has the authority which is asserted, what becomes of that branch of Congress which is peculiarly the representative of the people of the United States, and what is left of the functions of that body under the Constitution? For, although the House of Representatives might be unwilling to agree to the incorporation of alien races, it would be impotent to prevent its accomplishment, and the express provisions conferring upon Congress the power to regulate commerce, the right to raise revenue—bills for which, by the Constitution, must originate in the House of Representatives—and the authority to prescribe uniform naturalization laws, would be in effect set at naught by the treaty-making power. And the consequent result—incorporation—would be beyond all future control of or remedy by the American people, since, at once and without hope of redress or power of change, incorporation

by the treaty would have been brought about. The inconsistency of the position is at once manifest. The basis of the argument is that the treaty must be considered to have been incorporated, because acquisition presupposes the exercise of judgment as to fitness for immediate incorporation. But the deduction drawn is, although the judgment exercised is against immediate incorporation and this result is plainly expressed, the conditions are void because no judgment against incorporation can be called into play.

"All the confusion and dangers above indicated, however, it is argued, are more imaginary than real, since, although it be conceded that the treaty-making power has the right by cession to incorporate without the consent of Congress, that body may correct the evil by availing itself of the provision of the Constitution giving to Congress the right to dispose of the territory and other property of the United States. This assumes that there has been absolute incorporation by the treaty-making power on the one hand, and yet asserts that Congress may deal with the territory as if it had not been incorporated into the United States. In other words, the argument adopts conflicting theories of the Constitution, and applies them both at the same time. I am not unmindful that there has been some contrariety of decision on the subject of the meaning of the clause empowering Congress to dispose of the territories and other property of the United States, some adjudged cases treating that article as referring to property as such, and others deriving from it the general grant of power to govern territories. In view, however, of the relations of the territories to the government of the United States at the time of the adoption of the Constitution, and the solemn pledge then existing that they should forever 'remain a part of the Confederacy of the United States of America,' I can not resist the belief that the theory

that the disposing clause relates as well to a relinquishment or cession of sovereignty as to a mere transfer of rights of property is altogether erroneous.

“Observe, again, the inconsistency of this argument. It considers, on the one hand, that so vital is the question of incorporation that no alien territory may be acquired by a cession without absolutely endowing the territory with incorporation and the inhabitants with resulting citizenship, because, under our system of government, the assumption that a territory and its inhabitants may be held by any other title than one incorporating is impossible to be thought of. And yet, to avoid the evil consequences which must follow from accepting this proposition, the argument is that all citizenship of the United States is precarious and fleeting, subject to be sold at any moment like any other property. That is to say, to protect a newly acquired people in their presumed rights, it is essential to degrade the whole body of American citizenship.

“The reasoning which has sometimes been indulged in by those who asserted that the Constitution was not at all operative in the territories, is that, as they were acquired by purchase, the right to buy included the right to sell. This has been met by the proposition that if the country purchased and its inhabitants become incorporated into the United States, it came under the shelter of the Constitution, and no power existed to sell American citizens. In conformity to the principles which I have admitted, it is impossible for me to say at one and the same time that territory is an integral part of the United States, protected by the Constitution, and yet the safeguards, privileges, rights, and immunities which arise from this situation are so ephemeral in their character that by a mere act of sale they may be destroyed. And applying this reasoning to the provisions

of the treaty under consideration, to me it seems indubitable that if the treaty with Spain incorporated all the territory ceded into the United States, it resulted that the millions of people to whom that treaty related were, without the consent of the American people as expressed by Congress, and without any hope of relief, indissolubly made a part of our common country.

“Undoubtedly, the thought that under the Constitution power existed to dispose of people and territory, and thus to annihilate the rights of American citizens, was contrary to the conceptions of the Constitution entertained by Washington and Jefferson.

“True, from the exigency of a calamitous war or the necessity of a settlement of boundaries, it may be that citizens of the United States may be expatriated by the action of the treaty-making power, impliedly or expressly ratified by Congress.

“But the arising of these particular conditions can not justify the general proposition that territory which is an integral part of the United States may, as a mere act of sale, be disposed of. If, however, the right to dispose of an incorporated American territory and citizens by the mere exertion of the power to sell be conceded, *arguendo*, it would not relieve the dilemma. It is ever true that, where a malign principle is adopted, as long as the error is adhered to it must continue to produce its baleful results. Certainly, if there be no power to acquire subject to a condition, it must follow that there is no authority to dispose of subject to conditions, since it can not be that the mere change of form of the transaction could bestow a power which the Constitution has not conferred. It would follow, then, that any conditions annexed to a disposition which looked to the protection of the people of the United States, or to enable

them to safeguard the disposal of territory, would be void; and thus it would be that either the United States must hold on absolutely, or must dispose of unconditionally.

"A practical illustration will at once make the consequences clear. Suppose Congress should determine that the millions of inhabitants of the Philippine Islands should not continue appurtenant to the United States, but that they should be allowed to establish an autonomous government, outside of the Constitution of the United States, coupled, however, with such conditions providing for control as far only as essential to the guaranty of life and property and to protect against foreign encroachment. If the proposition of incorporation be well founded, at once the question would arise whether the ability to impose these conditions existed, since no power was conferred by the Constitution to annex conditions which would limit the disposition. And if it be that the question of whether territory is immediately fit for incorporation when it is acquired is a judicial and not a legislative one, it would follow that the validity of the conditions would also come within the scope of judicial authority, and thus the entire political policy of the government be alone controlled by the judiciary.

"The theory as to the treaty-making power upon which the argument which has just been commented upon rests, it is now proposed to be shown, is refuted by the history of the government from the beginning. There has not been a single cession made from the time of the Confederation up to the present day, excluding the recent treaty with Spain, which has not contained stipulations to the effect that the United States through Congress would either not disincorporate or would incorporate the ceded territory into the United States. . . . To adopt

the limitations on the treaty-making power now insisted upon would presuppose that every one of these conditions thus sedulously provided for was superfluous, since the guaranties which they afforded would have obtained, although they were not expressly provided for.

"When the various treaties by which foreign territory has been acquired are considered in the light of the circumstances which surrounded them, it becomes to my mind clearly established that the treaty-making power was always deemed to be devoid of authority to incorporate territory into the United States without the assent, express or implied, of Congress, and that no question to the contrary has ever been even mooted."

The opinion reviews the history of the various acquisitions of territory by the United States, quotes from the decisions of the court, and concludes:

"It is, then, as I think, indubitably settled by the principles of the law of nations, by the nature of the government created under the Constitution, by the express and implied powers conferred upon that government by the Constitution, by the mode in which those powers have been executed, from the beginning, and by an unbroken line of decisions of this court, first announced by Marshall and followed and lucidly expounded by Taney, that the treaty-making power can not incorporate territory into the United States without the express or implied assent of Congress, that it may insert in a treaty conditions against immediate incorporation, and that, on the other hand, when it has expressed in the treaty the conditions favorable to incorporation, they will, if the treaty be not repudiated by Congress, have the force of the law of the land, and therefore by the fulfilment of such conditions cause incorporation to result. It must follow, therefore, that where a treaty contains no conditions for incorporation, and, above all, where it not only has no

such conditions, but expressly provides to the contrary, incorporation does not arise until, in the wisdom of Congress, it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family.

“Does, then, the treaty in question contain a provision for incorporation, or does it, on the contrary, stipulate that incorporation shall not take place from the mere effect of the treaty and until Congress has so determined?—is then the only question remaining for consideration.

“The provisions of the treaty with respect to the status of Porto Rico and its inhabitants are as follows:

“‘Article II. Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam, in the Marianas or Ladrões.’ [30 Stat. at L. 1755.]

“‘Article IX. Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

“‘The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.’ [30 Stat. at L. 1759.]

“‘Article X. The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.’ [30 Stat. at L. 1759, 1760.]

“It is to me obvious that the above-quoted provisions of the treaty do not stipulate for incorporation, but, on the contrary, expressly provide that the ‘civil rights and political status of the native inhabitants of the territories hereby ceded’ shall be determined by Congress. When the rights to which this careful provision refers are put in juxtaposition with those which have been deemed essential from the foundation of the government to bring about incorporation, all of which have been previously referred to, I can not doubt that the express purpose of the treaty was, not only to leave the status of the territory to be determined by Congress, but to prevent the treaty from operating to the contrary. Of course, it is evident that the express or implied acquiescence by Congress in a treaty so framed can not import that a result was brought about which the treaty itself—giving effect to its provisions—could not produce. And, in addition, the provisions of the Act by which the duty here in question was imposed, taken as a whole, seem to me plainly to manifest the intention of Congress that, for the present, at least, Porto Rico is not to be incorporated into the United States.

“The fact that the Act directs the officers to swear to support the Constitution does not militate against this view, for, as I have conceded, whether the island be incorporated or not, the applicable provisions of the Constitution are there in force. A further analysis of the provisions of the Act seems to me not to be required in

view of the fact that, as the Act was reported from the committee, it contained a provision conferring citizenship upon the inhabitants of Porto Rico, and this was stricken out in the Senate. The argument, therefore, can only be that rights were conferred, which, after consideration, it was determined should not be granted. Moreover I fail to see how it is possible, on the one hand, to declare that Congress in passing the Act had exceeded its powers by treating Porto Rico as not incorporated into the United States, and, at the same time, it be said that the provisions of the Act itself amount to an incorporation of Porto Rico into the United States, although the treaty had not previously done so. It in reason can not be that the Act is void because it seeks to keep the island disincorporated, and, at the same time, that material provisions are not to be enforced because the Act does incorporate. Two irreconcilable views of that Act can not be taken at the same time, the consequence being to cause it to be unconstitutional.

"In what has preceded I have in effect considered every substantial proposition, and have either conceded or reviewed every authority referred to as establishing that immediate incorporation resulted from the treaty of cession which is under consideration. Indeed, the whole argument in favor of the view that immediate incorporation followed upon the ratification of the treaty in its last analysis necessarily comes to this: Since it has been decided that incorporation flows from a treaty which provides for that result, when its provisions have been expressly or impliedly approved by Congress, it must follow that the same effect flows from a treaty which expressly stipulates to the contrary, even although the condition to that end has been approved by Congress. That is to say, the argument is this: Because a provision for incorporation when ratified incorporates, therefore a provision against incorporation must also produce

the very consequence which it expressly provides against.

"The result of what has been said is that whilst, in an international sense, Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. As a necessary consequence, the impost in question assessed on merchandise coming from Porto Rico into the United States after the cession was within the power of Congress, and that body was not, moreover, as to such imposts, controlled by the clause requiring that imposts should be uniform throughout the United States; in other words, the provision of the Constitution just referred to was not applicable to Congress in legislating for Porto Rico.

"Incidentally I have heretofore pointed out that the arguments of expediency pressed with so much earnestness and ability concern the legislative, and not the judicial, department of the government. But it may be observed that, even if the disastrous consequences which are foreshadowed as arising from conceding that the government of the United States may hold property without incorporation were to tempt me to depart from what seems to me to be the plain line of judicial duty, reason admonishes me that so doing would not serve to prevent the grave evils which it is insisted must come, but, on the contrary, would only render them more dangerous. This must be the result, since, as already said, it seems to me it is not open to serious dispute that the military arm of the government of the United States may hold and occupy conquered territory without incorporation for such length of time as may seem appropriate to Congress in the exercise of its discretion. The denial of the right of the civil power to do so would not, therefore, prevent the holding of territory by the United

States if it was deemed best by the political department of the government, but would simply necessitate that it should be exercised by the military instead of by the civil power."

2. Status of Porto Ricans and Filipinos.

In conformity with the provision of the treaty which declares that the civil rights and political status of the native inhabitants of the ceded territories shall be determined by the Congress, Congress, by the Act of April 12, 1900 (31 Stat. at L. 77, Ch. 191), establishing a civil government for Porto Rico, provided that "all inhabitants continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the 11th day of April, 1900, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the 11th day of April, 1899 (30 Stat. at L. 1754); and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such." (Sec. 7.)

And by the Act of July 1st, 1902 (32 Stat. at L. 691, Chap. 1369), providing for the administration of the affairs of civil government in the Philippine Islands, Congress declared that "all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the

Philippine Islands, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December 10th, 1898" (Sec. 4).* [30 Stat. at L. 1754].

From a despatch of the United States consul at Amoy in August, 1903, it appeared that Buenaventura Chuntianlay, a Chinese merchant, born at Amoy, emigrated to the Philippines thirty years ago, and had been domiciled there since that time. In 1899 he married a native of the Philippines, and, as the result of the marriage, a son was born in the Philippine Islands December 5, 1902. Chuntianlay, who was then with his family on a temporary visit in Amoy, wished to be registered in the consulate, or, failing that, desired to have either his wife or child registered. The consul stated that Chuntianlay had considerable property interests in Amoy, and that his object

* The whole law relating to the citizenship of residents of the Philippine Islands is as follows :

ARTICLE IX OF THE TREATY OF PARIS.

Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds, and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year (extended by the protocol of agreement proclaimed on April 28, 1900, to eighteen months, 31 Stat. at L., 1881) from the date of the exchange of ratifications of this treaty (April 11, 1899), a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

in trying to register a member of the family in the consulate was to enable him to transfer the property to the member so registered, thus putting it under American ownership, to avoid the assessments of the Chinese officials, which are said to be quite heavy on property owned by nonresidents. The consul inquired whether any one of his family was entitled to registration, and, if so, whether it would be proper for him to record a transfer of property from Mr. Chuntianlay to such member of his family.

In reply, the Acting Secretary of State said: "Upon the facts stated, neither of the Chuntianlays appears to be entitled to registration in the consulate.

"Section 4 of the Act of July 1, 1902 (32 Stat. at L. 692, Ch. 1369), provides that 'all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands, and their children born sub-

SECTION 4 OF ACT OF CONGRESS OF JULY 1, 1902.

That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight. [And the protocol proclaimed April 28, 1900.]

PROVISIONS OF THE SPANISH CIVIL CODE.

ART. 17. The following are Spaniards: (1) Persons born in Spanish territory; (2) children of a Spanish father or mother, even though they were born out of Spain; (3) foreigners who may have obtained naturalization papers; (4) those who, without said papers, may have acquired a residence in any town in the monarchy.

ART. 18. Children, while they remain under the parental authority, have the nationality of their parents.

In order that those born of foreign parents in Spanish territory may enjoy the benefits granted them by No. 1 of article 17, it shall be an

sequent thereto, shall be deemed and held to be citizens of the Philippine Islands, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December 10, 1898.' 30 Stat. at L. 1754.

"While Mr. Chuntianlay comes within the language of the statute, 'inhabitants of the Philippine Islands,' he is not included within the description, 'who were Spanish subjects on the 11th day of April, 1899.' According to the statement in your despatch, he is 'a Chinese merchant who emigrated to the Philippine Islands thirty years ago and has been domiciled there since that time.' If he had acquired Spanish citizenship it is inferred that that fact would have been stated.

indispensable requisite that the parents declare, in the manner and before the officials specified in article 19, that they choose in the name of their children the Spanish nationality, renouncing all others.

ART. 19. The children of a foreigner born in Spanish possessions must state, within the year following their majority of emancipation, whether they desire to enjoy the citizenship of Spaniards granted them by article 17.

Those who are in the kingdom shall make this declaration before the official in charge of the civil registry of the town in which they reside; those who reside abroad before one of the consular or diplomatic agents of the Spanish government, and those who are in a country in which the government has no agent addressing the secretary of state of Spain.

The effect of these provisions, as interpreted by the Supreme Court of the Philippine Islands in the Bosque case (1 Philippine Reports, 88) is that:

1. Natives of Spain became citizens of the Philippine Islands if they complied with two requirements: (a) Residence in the islands from 11 April, 1899, to 11 October, 1900, and (b) failure to preserve allegiance to Spain by a legal declaration made within that period.

2. Inhabitants of the Philippine Islands (other than those embraced in the last paragraph), and their children born after 11 April, 1899, are citizens of the Philippine Islands, if (a) they were Spanish subjects on that date, and (b) resided in the Philippine Islands on that date and continue to reside therein. Memorandum regarding Naturalization of Residents of the Philippine Islands, S. Doc. 336, 59th Cong., 1st Sess.

"Assuming, then, that Mr. Chuntianlay is, as stated in your despatch, a Chinese subject domiciled in the Philippine Islands, upon his marriage to a native of the Philippines, under the general rule that the nationality of the wife follows that of the husband, she became a Chinese subject.

"The son, born in the Philippines December 5, 1902, is not a citizen of the Philippine Islands within the meaning of the statute, as that only applies to the children of inhabitants of the islands who were Spanish subjects on April 11, 1899." Asst. Sec'y Adey to United States Consul at Amoy, September 5, 1903.

The treaty provision and the Act of Congress of April 12, 1900, were construed by the Circuit Court of the United States for the southern district of New York, in October, 1902, in the case of *Re Gonzalez*, 118 Fed. 941, upon a petition for a writ of habeas corpus. The facts are stated in the opinion of the court, Lacombe, Judge: "Petitioner, an unmarried woman, is a native of Porto Rico, twenty years of age, who arrived here from that island on August 24, 1902. She was detained at Ellis Island immigrant station, was duly examined by a board of special inquiry, and was excluded from admission into the United States upon the ground that she was liable to become a public charge. The only question open for discussion on this application is whether or not petitioner is an alien. Upon all other questions the decision of the appropriate immigration officers, when adverse to the admission of the alien, is made final, unless reversed on appeal to the Secretary of the Treasury. Act August 18, 1894 (28 Stat. at L. 390, Chap. 301 [U. S. Comp. Stat. 1901, 1303]). . . . The 14th Amendment to the Constitution provides that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. It is not disputed that petitioner was by birth an alien. Unless in

some appropriate way she has since been naturalized, she is still an alien. There is no suggestion that she was ever naturalized under the general laws prescribed by Congress regulating the admission of aliens to citizenship. The treaty of Paris, unlike earlier treaties which dealt with the Louisiana and Florida purchases, with California, and with Alaska, did not undertake to make the native-born inhabitants of Porto Rico citizens of the United States. It expressly provided that 'the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.' In conformity with this provision of the treaty it was provided in Act April 12, 1900, Chap. 191, Sec. 7 [31 Stat. at L. 77], 'that all inhabitants continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States (excepting such as had preserved their allegiance to Spain), and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of "The People of Porto Rico," with governmental powers as hereinafter conferred and with power to sue and be sued as such.' This legislation has certainly not operated to effect a naturalization of the petitioner as a citizen of the United States. Being foreign born and not naturalized, she remains an alien, and subject to the provisions of law regulating the admission of aliens who come to the United States."

Upon appeal, however, the Supreme Court reversed this decision, and held that a native of Porto Rico who was an inhabitant of that island at the time it was ceded to the United States, is not an alien immigrant within the meaning of the immigration law of 1891. The court

said that it was not necessary to go into the question whether the cession accomplished the naturalization of the people of Porto Rico, or whether a citizen of Porto Rico, under the law of Congress creating a civil government for that country, is a citizen of the United States; that the question presented to the court was one of alienage rather than one of citizenship; that it seemed clear that the immigration act related to persons owing allegiance to a foreign government and citizens or subjects thereof; and that citizens of Porto Rico, whose permanent allegiance is due to the United States, living within the peace and domain of the United States, the organic law of whose domicil was enacted by the United States and is enforced through officials sworn to support the Constitution of the United States, are not aliens, and upon their arrival at our ports are not alien immigrants. *Gonzales v. Williams*, 192 U. S. 1.

In the case of *Mercado*, a native of Porto Rico, who, in 1901, sought the intervention of this government to present for him a claim against the government of Venezuela, where he had been residing for fourteen years, it was held that as he was not an "inhabitant" of Porto Rico at the time of its cession to the United States, and was not a citizen of Porto Rico within the definition of the Act of Congress of April 12, 1900 (31 Stat. at L. 77), he was not entitled to the protection of the United States. Mr. Adee to Mr. Loomis, August 10, 1901, MSS. Inst. to Venezuela. See, also, *Paradis' case*, For. Rel. 1905, 542 et seq.

In the case of *Marrero*, a native of Porto Rico, who had resided in Chile since 1884, but who proposed, in 1901, to return to Porto Rico to perform the duties of citizenship there, it was held by Acting Secretary Hill that the language of Sec. 7 of the Act of April 12, 1900 (31 Stat. at L. 77, Ch. 191), was to be construed in its general legal sense, in which continued personal presence

is not necessary to constitute continuous residence; and that a native of Porto Rico who makes it his permanent domicile does not, therefore, lose the benefits of this law because he was temporarily abiding elsewhere when it went into effect. Acting Secretary Hill to Mr. Lenderink, April 29, 1901, For. Rel. 1901, 32. And Attorney-General Knox (24 Ops. Atty. Gen. 40) held that a native Porto Rican temporarily living in France, who was not in Porto Rico on April 11, 1899, is, under Sec. 7 of the Act of April 12, 1900 (31 Stat. at L. 79), a citizen of Porto Rico.

At the date of the passage of the Act of April 12 1900, the law of the United States (Rev.Stat., Sec. 4076, U. S. Comp. Stat. 1901, 2765) prohibited the granting or verification of passports to or for any persons other than citizens of the United States. The Act of June 14, 1902 (32 Stat. at L. 386, Ch. 1088), however, amended this section so as to make it read: "No passport shall be granted or issued to, or verified for, any other persons than those owing allegiance, whether citizens or not, to the United States." Under this law as amended passports are now issued to citizens of Porto Rico and the Philippine Islands.

i. Treaties with Indians.

Certain Indian tribes, or such members thereof as chose to remain behind on the removal of their tribes westward, have been declared to be citizens, and individuals of the particular tribes have been authorized to become citizens on application to a court of the United States for naturalization, and satisfactory proof of fitness for civilized life. See treaties in 1817 and 1835 with the Cherokees (7 Stat. at L. 159, 483); and in 1820 and 1830, with the Choctaws (7 Stat. at L. 211, 335); in 1855 with the Wyandottes (10 Stat. at L. 1159); in 1861 and 1866 with the Pottawatomies (12 Stat. at L. 1192 and 14 Stat.

at L. 763); in 1862 with the Ottawas² (12 Stat. at L. 1237), and the Kickapoos (13 Stat. at L. 624). See, also, treaties with the Stockbridge Indians in 1848 and 1856 (9 Stat. at L. 955, and 11 Stat. at L. 663).

The Act of Congress of March 3, 1871 (16 Stat. at L. 566, Chap. 120, Rev. Stat. Sec. 2079), required that the Indian tribes should be dealt with for the future through the legislative, and not through the treaty-making power. The provision is as follows: "Hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty."

III. Naturalization by Special Act of Congress.

A. In General.

There are numerous instances of naturalization by special statute.

The Act of April 14, 1802 (see Par. 5, Rev. Stat., Sec. 2165, U. S. Comp. Stat. 1901, 1330), provided for the admission of aliens who were residing in the United States before January 29, 1795, upon proof of two years' residence in this country.

The Act of March 22, 1816 (see Par. 6, Rev. Stat., Sec. 2165, U. S. Comp. Stat. 1901, 1330), provided for the admission, without previous declaration of intention, of aliens who had resided in the United States between June 18, 1798, and June 18, 1812.

B. On the Acquisition of the Territory of Oregon.

The acquisition of the Territory of Oregon led to the enactment of another special law extending citizenship to persons born therein. The Act of Congress of May 18, 1872 (Rev. Stat., Sec. 1905, U. S. Comp. Stat. 1901, 1268), provided that "all persons born in the district of country formerly known as the Territory of Oregon, and subject to the jurisdiction of the United States on

the 18th May, 1872, are citizens in the same manner as if born elsewhere in the United States."

C. On the Annexation of Hawaii.

The annexation of Hawaii was followed by the enactment of the law of April 30, 1900 (31 Stat. at L. 141, Chap. 339), "providing a government for the Territory of Hawaii," Section 4 of which declares that all persons who were citizens of the Republic of Hawaii on August 12, 1898, are citizens of the United States and citizens of the Territory of Hawaii.

Ng Faun, a subject of China, was admitted to citizenship in the Kingdom of Hawaii in 1892 and was a citizen of Hawaii on August 12, 1898. In 1901 he made application to the Department of State for a passport as a citizen of the United States. The Attorney General, to whom the Secretary of State referred the question whether Ng Faun was a citizen of the United States, quoted the language of Section 4 of the Act of April 30, 1900 (31 Stat. at L. 141, Chap. 339), "that all persons who were citizens of the Republic of Hawaii on August 12, 1898, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii," and held that this comprehensive language included Chinese citizens of Hawaii. A passport was accordingly issued to Ng Faun. 23 Ops. Atty. Gen. 509. See, also, 23 Ops. Atty. Gen. 345 and 352, in which it was held that any Chinese person who was a citizen of the Republic of Hawaii on August 12, 1898, and who has not since abandoned, or been legally deprived of, his citizenship, is a citizen of the United States. See, also, Chung Dai Yau's case, For. Rel. 1905, 735.

D. Readmission of Nellie Grant Sartoris to Citizenship.

And in 1898, Congress, by joint resolution, readmitted to citizenship Nellie Grant Sartoris, the daughter of General U. S. Grant, who had married a British subject,

and who, upon the death of her husband, returned to the United States to reside. See page 258, *supra*.

E. Naturalization of Indians.

In the same way many classes of Indians have been made citizens of the United States. By the Act of March 3, 1843, it was provided that, on the completion of certain arrangements for the partition of the lands of the tribe among its members, the Stockbridge tribe of Indians, and each and every of them, shall be deemed to be citizens of the United States, to all intents and purposes, and entitled to all the rights, privileges, and immunities of such citizens. 5 Stat. at L. 645, Chap. 101.

The Act of July 15, 1870, (16 Stat. at L. 361, Chap. 296), provided that if at any time thereafter any of the Winnebago Indians in the State of Minnesota should desire to become citizens of the United States they should make application to the District Court of the United States for the district of Minnesota, and in open court make the same proof and take the same oath of allegiance as is provided by law for the naturalization of aliens; and should also make proof, to the satisfaction of the court, that they were sufficiently intelligent and prudent to control their affairs and interests; that they had adopted the habits of civilized life, and had, for at least five years before, been able to support themselves and their families; and thereupon they should be declared by the court to be citizens of the United States, the declaration should be entered of record, and a certificate thereof given to the applicant.

By the Act of March 3, 1873 (17 Stat. at L. 632, Chap. 332), a similar provision was made for the naturalization of any adult member of the Miami tribe in Kansas, and of his minor children.

Some of the Sioux tribes, and the Brothertown Indians,

have also been granted citizenship by special Acts of Congress.

The Act of February 8, 1887 (24 Stat. at L. 390, Ch. 119, Sec. 6), providing for the allotment of lands in severalty to Indians on the various reservations, and extending the protection of the laws of the United States and the territories over the Indians, etc., is very sweeping in its terms, making every Indian situated as therein referred to a citizen of the United States. It reads as follows: "Every Indian born within the territorial limits of the United States, to whom allotments shall have been made under the provisions of this Act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States."

An Indian to whom land has been allotted in severalty becomes a citizen of the United States, with all the rights, privileges, and immunities of such, including the right to sue in the proper forum. *Re Celestine*, 114 Fed. 551; *Bird v. Terry*, 129 Fed. 472, 592; *Baldwin v. Letson*, 6 Kans. App. 11; *Carter v. Wann*, 6 Ida. 556. See, also, 6 Ida. 85.

The Act of May 2, 1890, provided that "any member of any Indian tribe or nation residing in the Indian Territory may apply to the United States court therein to become a citizen of the United States, and such court shall have jurisdiction thereof, and shall hear and determine such application, as provided in the statutes of

the United States." 26 Stat at L. 99, Ch. 182, Sec. 43.

And every Indian in Indian Territory was made a citizen of the United States by the following innocent provision in the Act of March 3, 1901, 31 Stat. 1447, viz: "Section six of chapter one hundred and nineteen of the United States Statutes at Large, numbered twenty-four, page three hundred and ninety, is hereby amended as follows, to wit: after the words '*civilized life*,' in line 13, said section six, insert the words '*and every Indian in Indian Territory*.'"

IV. Naturalization by Admission of Territory to Statehood.

A. In General.

Section 3 of article 4 of the Constitution provides that "new states may be admitted by the Congress into this Union;" and the second paragraph of the same section declares that "the Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States."

So far as the original states were concerned, all those who were citizens of such states became, upon the formation of the Union, citizens of the United States. As remarked by Mr. Chief Justice Waite in *Minor v. Happersett*, 21 Wall. 162, 167, 22 L. ed. 627, 628: "Whoever, then, was one of the people of either of these states when the Constitution of the United States was adopted, became *ipso facto*, a citizen—a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt."

B. Louisiana.

By article 3 of the treaty of Paris of 1803 (8 Stat. at L. 202) it was provided that "the inhabitants of the

ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

It was said by Mr. Justice Catron, in his separate opinion in *Scott v. Sandford*, 19 How. 393, 525, 15 L. ed. 691, 750: "The settled doctrine in the state courts of Louisiana is, that a French subject coming to the Orleans territory, after the treaty of 1803 was made, and before Louisiana was admitted into the Union, and being an inhabitant at the time of the admission, became a citizen of the United States by that Act; that he was one of the inhabitants contemplated by the 3d article of the treaty, which referred to all inhabitants embraced within the new state on its admission. That this is the true construction I have no doubt."

In *Desbois's case*, 2 Mart. (La.) 185 (decided in 1812), one Desbois, of French birth, applied for a license to practise as a counsellor and attorney at law in the superior courts of Louisiana, and by one of the rules of the court the applicant could not be admitted unless he was a citizen of the United States. Desbois conceded that he had no claim to citizenship by birth, nor by naturalization under the Acts of Congress to establish an uniform rule on that subject, but he contended that there was a third mode of acquiring citizenship of the United States, namely, the admission into the Union of a state of which he was a citizen. He contended that, as he had, in the year 1806, removed to, and settled with his family in the city of New Orleans in the territory of Orleans, in contemplation of the enjoyment of the advantages which

the laws of the territory and of the United States held out to foreigners removing into that territory, and had ever since considered it as his adopted country, he had become a citizen under the Act of Congress of March 2, 1805 (2 Stat. at L. 322, Ch. 23), further providing for the territorial government of Orleans, the enabling Act of February 20, 1811 (2 Stat. at L. 641, Ch. 21), and that of April 8, 1812 (2 Stat. at L. 701, Ch. 50), admitting the state.

Judge Martin, who delivered the opinion of the court, referred, among other things, to the fact that the Act of Congress authorizing the formation of the state government of Louisiana was almost literally copied from that which authorized that of Ohio, and, pointing out that by the 1st section of the latter statute the inhabitants of the designated territory were authorized to form for themselves a state constitution, while, by the 4th section the persons entitled to vote for members of the convention were described as, first, all male citizens of the United States, and next, all persons having in all other respects the legal qualifications to vote for members of the general assembly of the territory, which were a freehold of fifty acres of land in the district, and citizenship of one of the states, and residence in the district, or the like freehold and two years' residence in the district, said: "The word 'inhabitants,' in the 1st section of this Act, must be taken *lato sensu*; it can not be restrained so as to include citizens of the United States only; for other persons are afterwards called upon to vote. There is not any treaty, or other instrument, which may be said to control it. Every attempt to restrict it must proceed on principles absolutely arbitrary. If the word is to be taken *lato sensu* in the act passed in favor of the people of one territory, is there any reason to say that we are to restrain it in another act, passed for

similar purposes, in favor of the people of another territory?" Id. 192, 193.

His conclusion was that the applicant must be considered a citizen of the State of Louisiana and entitled to all the rights and privileges of a citizen of the United States.

In 1813, in *United States v. Lavery*, 3 Mart. (La.) 733, Judge Hall of the district court of the United States held that the inhabitants of the territory of Orleans became citizens of Louisiana and of the United States by the admission of Louisiana into the Union; denied that the only constitutional mode of becoming a citizen of the United States is naturalization by compliance with the uniform rule established by Congress; and fully agreed with the decision in *Desbois's* case, which he cited.

In an Alabama case, it was held, however, that an alien moving into the territory of Louisiana after it was ceded to the United States, and residing there until after its admission into the Union, as a state, does not thereby become a citizen of the United States. *State v. Primrose*, 3 Ala. 546.

C. States Carved Out of Northwest Territory.

1. In General.

By the ordinance for the government of the Northwest Territory, of July 13, 1787 (1 Stat. at L. 51, note), it was provided that, as soon as there should be 5,000 free male inhabitants of full age in the district thereby constituted, they were to receive authority to elect representatives to a general assembly, and the qualifications of a representative in such cases were previous citizenship of one of the United States for three years and residence in the district, or a residence of three years in the district and a fee simple estate of 200 acres of land therein. The qualifications of electors were a freehold

in 50 acres of land in the district, previous citizenship of one of the United States, and residence, or the like freehold, and two years' residence in the district. And it was also provided that there should be formed in the territory not less than three, nor more than five, states, with certain boundaries, and that, whenever any such state should contain 60,000 free inhabitants, such state should be admitted by its delegates in Congress on an equal footing with the original states in all respects whatever, and should be at liberty to form a permanent constitution and state government, provided it should be republican and in conformity with the articles of compact. 1 Stat. at L. 51, note; Rev. Stat. 2d ed. Organic Laws, 13, 14.

2. Ohio, Indiana, and Illinois.

Reference to the various Acts of Congress creating the Indiana and Illinois territories (2 Stat. at L. 58, Chap. 41; 2 Stat. at L. 514, Chap. 13); the enabling acts under which the state governments of Ohio, Indiana, and Illinois were formed (2 Stat. at L. 173, Chap. 40; 3 Stat. at L. 289, Chap. 57; 3 Stat. at L. 428, Chap. 67); and the act recognizing and resolutions admitting those states (2 Stat. at L. 201, Chap. 7; 3 Stat. at L. 399; 3 Stat. at L. 536); and to their original constitutions, establishes that the inhabitants or people who were empowered to take part in the creation of these new political organisms and who continued to participate in the discharge of political functions, included others than those who were originally citizens of the United States. And that the action of Congress was advisedly taken is put beyond doubt by the language used in the legislation in question.

3. Michigan.

In case of the admission of Michigan this was strikingly shown. By the Act of Congress of January 11, 1805

(2 Stat. at L. 309, Chap. 5), a part of the Indiana Territory was constituted the Territory of Michigan, and a government in all respects similar to that provided by the ordinance of 1787 (1 Stat. at L. 51*a*), was established. The Act of February 16, 1819 (3 Stat. at L. 482, Chap. 22), authorized that territory to send a delegate to Congress, and conferred the right of suffrage on the free white male citizens of the territory who had resided therein one year next preceding the election, and had paid county or territorial taxes. The Act of March 3, 1823 (3 Stat. at L. 769, Chap. 36), provided that all citizens of the United States having the qualifications prescribed by the Act of February 16, 1819, should be entitled to vote and be eligible to office. By an Act of the territorial legislature of January 26, 1835, the free white male inhabitants of the territory, of full age, who had resided therein three months preceding "the 4th day of April next in the year 1835," were authorized to choose delegates to form a constitution and state government. Mich. Laws, 1835, 72, 75. Delegates were elected accordingly, and a constitution completed January 29, 1835, and ratified by a vote of the people November 2, 1835, which provided that every white male citizen above the age of 21 years, who had resided in the state six months next preceding any election, should be entitled to vote at any election, "and every white male inhabitant of the age aforesaid, who may be a resident of the state at the time of the signing of this constitution, shall have the right of voting as aforesaid." 1 Charters and Constitutions, 983, 984. This constitution was laid before Congress by President Jackson in a special message December 9, 1835, and a bill was introduced for the admission of Michigan into the Union. While this was under consideration an amendment to the provision that on the assent being given by a convention of the people of Michigan to certain boundaries defined in the bill, the

state should be admitted, to strike out the words, "people of the said state," and insert, "by the free male white citizens of the United States over the age of 21 years, residing within the limits of the proposed state," was voted down; as was also another amendment proposing to insert after that part of the bill which declared the constitution of the new state ratified and confirmed by Congress the words, "except that provision of said Constitution by which aliens are permitted to enjoy the right of suffrage." The Act was passed June 15, 1836 (5 Stat. at L. 49, Chap. 99), and the conditions imposed having been first rejected and then finally accepted, the state was admitted into the Union by the Act of January 26, 1837 (5 Stat. at L. 144, Chap. 6).

In all these instances citizenship of the United States in virtue of the recognition by Congress of the qualified electors of the state as citizens thereof was apparently conceded, and it was the effect in that regard that furnished a chief argument to those who oppose the admission of Michigan. As to that state, the state Constitution of 1850, as amended in 1870, preserved the rights as an elector of "every male inhabitant, residing in the state on the 24th day of June, 1835." And in *Atty. Gen. ex rel. Conely v. Detroit*, 78 Mich. 545, 7 L. R. A. 99, 18 Am. St. Rep. 458, 44 N. W. 388, the Supreme Court of Michigan assigned, as one of the reasons for holding the registry law under consideration invalid, that no provision was therein made for this class of voters, nor for the inhabitants who had resided in Michigan in 1850, and declared their intention to become citizens of the United States, who had the right to vote under the Constitution of 1850.

D. Florida.

The 6th article of the treaty of 1819 with Spain (8 Stat. at L. 256) contained a provision to the same

effect as that in the Treaty of Paris (8 Stat. at L. 200), and Mr. Chief Justice Marshall said (*American Ins. Co. v. Canter*, 1 Pet. 511, 542, 7 L. ed. 242, 255): "This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition, independent of stipulation. They do not, however, participate in political power; they do not share in the government, till Florida shall become a state. In the meantime, Florida continues to be a territory of the United States; governed by virtue of that clause in the Constitution which empowers Congress 'to make all needful rules and regulations, respecting the territory, or other property belonging to the United States.'"

At the second session of the 27th Congress, in the case of David Levy, who had been elected a delegate from the Territory of Florida, where it was alleged that he was not a citizen of the United States, it was held by the House Committee of Elections that "it matters nothing whether the naturalization be effected by Act of Congress, by treaty, or by the admission of new states; the provision is alike applicable."

The question turned on whether Mr. Levy's father was an inhabitant of Florida at the time of its transfer to the United States, as the son admitted that he was not a native-born citizen of the United States, but claimed citizenship through that of his father effected by the treaty while he was a minor. The argument of the report in support of the position that "no principle has been more repeatedly announced by the judicial tribunals of the country, and more constantly acted upon, than that the leaning, in questions of citizenship, should always be in favor of the claimant of it," and that liberality of interpretation should be applied to such a

treaty, is well worthy of perusal. Contested elections 1834, 1835, 2d Session, 38th Congress, 41.

E. Texas.

By the annexation of Texas, under a joint resolution of Congress of March 1, 1845, and its admission into the Union on an equal footing with the original states, December 29, 1845, all the citizens of the former republic* became, without any express declaration, citizens of the United States. 5 Stat. at L. 798; 9 Stat. at L. 108; *McKinney v. Saviego*, 18 How. 235, 15 L. ed. 365, *Cryer v. Andrews*, 11 Tex. 170; *Barrett v. Kelly*, 31 Tex. 476; *Carter v. Territory*, 1 N. M. 317; 13 Ops. Atty. Gen. 397.

*"The citizens of Texas thus adopted into the citizenship of the United States were of three classes.

"1. Persons who came within the following description in Section 10 of the general provisions of the Constitution of the Republic of Texas [*viz.*]: 'All persons (Africans, the descendants of Africans, and Indians excepted) who were residing in Texas on the day of the Declaration of Independence [March 2, 1836] shall be considered citizens of the Republic, and entitled to all the privileges as such;' and who did not forfeit their citizenship by the acts defined in the 8th section of said provisions, which is in the words following: 'All persons who shall leave the country for the purpose of evading a participation in the present struggle [the war between Texas and Mexico for Texas independence], or who shall refuse to participate in it, or shall give aid or assistance to the present enemy, shall forfeit all rights of citizenship and such lands as they may hold in the Republic. . . .'

"2. Persons born in that Republic during its independence,—that is, between the dates of March 2, 1836, and December 29, 1845.

"3. Persons naturalized in the Republic of Texas.

"The provision for naturalization in that Republic was Section 6 of the general provisions of the Constitution [of Texas], and in the words following: 'All free white persons who shall emigrate to this Republic, and who shall, after a residence of six months, make oath before some competent authority that they intend to reside permanently in the same, and shall swear to support this Constitution, and that they will bear true allegiance to the Republic of Texas, shall be entitled to all the privileges of citizenship.'" 13 Ops. Atty Gen. 397.

F. Powers of Congress over Territories.

Chief Justice Fuller, in delivering the opinion in *Boyd v. Nebraska*, 143 U. S., at p. 169, 36 L. ed. 112, 12 Sup. Ct. Rep. 375, freely quoted above, said: "It is too late at this day to question the plenary power of Congress over the territories. As observed by Mr. Justice Matthews, delivering the opinion of the court in *Murphy v. Ramsey*, 114 U. S. 15, 44, 29 L. ed. 47, 57, 5 Sup. Ct. Rep. 747: 'It rests with Congress to say whether, in a given case, any of the people, resident in the territory, shall participate in the election of its officers, or the making of its laws; and it may, therefore, take from them any right of suffrage it may previously have conferred, or at any time modify or abridge it as it may deem expedient. The right of local self-government, as known to our system as a constitutional franchise, belongs, under the Constitution, to the states and to the people thereof, by whom that Constitution was ordained, and to whom by its terms all power not conferred by it upon the government of the United States was expressly reserved. The personal and civil rights of the inhabitants of the territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, state and national; their political rights are franchises which they hold as privileges in the legislative discretion of the Congress of the United States. . . . If we concede that this discretion in Congress is limited by the obvious purposes for which it was conferred, and that those purposes are satisfied by measures which prepare the people of the territories to become states in the Union, still the conclusion can not be avoided, that the Act of Congress here in question is clearly within that justification.'

"Congress having the power to deal with the people of the territories in view of the future states to be

formed from them, there can be no doubt that, in the admission of a state, a collective naturalization may be effected in accordance with the intention of Congress and the people applying for admission.

“Admission on an equal footing with the original states, in all respects whatever, involves equality of constitutional right and power, which can not thereafterwards be controlled; and it also involves the adoption, as citizens of the United States, of those whom Congress makes members of the political community, and who are recognized as such in the formation of the new state with the consent of Congress.”

When a state is admitted into the Union upon an equal footing with the original states, all residents thereof who are endowed by Congress with political rights and privileges, or who, with the consent of Congress, are permitted to participate in the formation of the new state, become citizens of the United States by adoption, even though, being foreigners, they have never complied with the requirements of the naturalization laws. *Boyd v. Nebraska*, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375.

Nebraska.

The Nebraska enabling Act (13 Stat. at L. 47, Chap. 59) declared that all persons qualified to vote for representatives of the territorial legislature should be eligible to election as members of the convention, and should be entitled to vote upon the acceptance or rejection of the constitution. By the existing laws of the territory, foreigners who had declared an intention to become citizens of the United States were entitled to vote at elections, and this provision was carried into the constitution of the new state, as ratified by Congress. The Supreme Court of the United States held in *Boyd v.*

Nebraska, 143 U. S. 135, 36 L. ed. 103, 12 Sup. Ct. Rep. 375, that upon the admission of the state into the Union, all persons of this class became citizens of the United States.

A citizen of France, a resident and inhabitant of the Territory of Nebraska, who had declared his intention to become a citizen of the United States, became a citizen of the United States upon the admission of Nebraska into the Union as a state. *Bahuaud v. Bize*, 105 Fed. 485.

CHAPTER V.

EXPATRIATION.

A. Definition.

B. Right of expatriation.

C. How effected.

a. In general.

b. Modes of expatriation.

1. Act of 1907.

(a) By naturalization in a foreign state.

(b) By taking the oath of allegiance to a foreign state.

(c) By residence in a foreign country.

Instructions of the Department of State.

Exceptions.

(A) When residence abroad is due to ill health or financial condition.

(B) Agents of American enterprises.

(C) Missionaries.

(d) By marriage.

2. By desertion.

3. Military or Naval service in foreign country.

4. Accepting public office under foreign government.

A. Definition.

Expatriation is the voluntary renunciation or abandonment of nationality and allegiance.

B. Right of Expatriation.

While the naturalization laws of the United States have from the beginning been based on the principle that the right to change one's allegiance is a natural and inherent right, there was considerable difference of opinion in this country, prior to 1868, on the question whether the English doctrine of perpetual allegiance obtained here. The right of a citizen to divest himself of his allegiance to the United States without the consent of the government was denied by able American jurists, but the political branch of this government uniformly held that the doctrine of indelible allegiance was not in force in the United States.

The question was definitely settled in this country by

the Act of Congress of July 27, 1868 (15 Stat. at L. 223, Ch. 249), which declares that "the right of expatriation is a natural and inherent right of all people."

This Act, which has been embodied in the Revised Statutes, reads as follows:

"Sec. 1999 [U. S. Comp. Stat. 1901, 1269]. Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas, in the recognition of this principle, this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore, any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the republic.

"Sec. 2000 [U. S. Comp. Stat. 1901, 1270]. All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of persons and property which is accorded to native-born citizens.

"Sec. 2001 [U. S. Comp. Stat. 1901, 1270]. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the re-

lease so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress."

But the promulgation of this municipal law did not operate to override the laws or practice of foreign governments inconsistent with it, and it was necessary to secure acceptance of the principle enunciated thereby, by means of treaties.

Treaties recognizing the right of expatriation, with various modifications in detail, were concluded between the United States and the North German Union (15 Stat. at L. 615), Bavaria (15 Stat. at L. 661), Baden (16 Stat. at L. 731), Württemberg (16 Stat. at L. 735), and Belgium (16 Stat. at L. 747), in 1868; with Hesse (16 Stat. at L. 743), and Sweden and Norway (17 Stat. at L. 809), in 1869; with Austria (17 Stat. at L. 833), and England (16 Stat. at L. 775), in 1870; with Denmark (17 Stat. at L. 941), in 1872, and with Haiti in 1902.

One of the chief causes of the War of 1812 between the United States and Great Britain was the rigor with which the latter government applied the doctrine of inalienable allegiance. British cruisers took from American vessels on the high seas naturalized American citizens of British origin, and impressed them for service in the royal navy, on the grounds that they were British subjects by birth, and that no forms gone through in America could divest them of their British nationality. This was vigorously resisted by the United States.

While the war did not settle this question, opinion in England gradually changed, and by the naturalization act of 1870 (33 & 34 Vict. 105, Chap. 14), which shortly preceded the treaty with the United States, the old doctrine of the common law was abandoned, and it was

declared that "any British subject who has at any time before, or may at any time after, the passing of this act, when in any foreign state, and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject, and be regarded as an alien." See Lawrence, *Principles of International Law*, 196, 197.

C. How Effected.

(a.) In General.

The Act of Congress of 1868 (15 Stat. at L. 223, Chap. 249, U. S. Comp. Stat. 1901, 1269), does not define what steps must be taken by a citizen before it can be held that he has become denationalized. In fact, until the enactment of the law of March 2, 1907, "in reference to the expatriation of citizens and their protection abroad," there was no mode of renunciation of citizenship prescribed by our laws, with the exception of Section 1998, of the Revised Statutes, by virtue of which desertion from the Army or Navy works forfeiture of the rights of citizenship.* Whether expatriation had taken place in any case was to be determined by the facts and circumstances of the particular case. No general rule that would apply to all cases could be laid down.

b. Modes of Expatriation.

1. Act of 1907.

The law of March 2, 1907, expressly prescribes several modes by which citizenship of the United States may be renounced.

The Act (Sections 2 and 3) reads as follows:

"Sec. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when

*See, also, Section 15, Act of June 29, 1906.

he has taken an oath of allegiance to any foreign state.

“When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however,* That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided, also,* That no American citizen shall be allowed to expatriate himself when this country is at war.

“Sec. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.”

It will be observed that the Act declares that expatriation may be effected in four different ways, viz: By naturalization in a foreign state, by taking the oath of allegiance to a foreign state, by marriage of an American woman to a foreigner, and by residence of a naturalized citizen of the United States in a foreign country.

(A.) By Naturalization in a Foreign State.

This is the most obvious form of expatriation, and, even in the absence of any statutory declaration to that effect, was always regarded as a method of expatriation.

While the purpose of the Act of 1868 was, primarily, to define the rights of aliens seeking to acquire citizenship in this country rather than the rights of American

citizens, its declaration that the right of expatriation is "a natural and inherent right of all people," applies to citizens of the United States who seek to exercise it as well as to those of other countries. 14 Ops. Atty. Gen. 295.

(B.) By Taking the Oath of Allegiance to a Foreign State.

Before the passage of the Act of March 2, 1907, the rulings of the Executive Departments of the government show a difference of opinion on the question whether or not expatriation was effected by the taking of an oath of allegiance to a foreign power.

In the case of Sidney Mason, who, while residing in Porto Rico, had taken the oath of allegiance to the King of Spain and renounced his citizenship in the United States, Secretary Forsyth, in 1839, declined to sanction the issuance of a passport, on the ground that Mason had become a Spanish subject. 3 Moore's Int. Law Digest, 718.

On the other hand, it was held by the Supreme Court, in *Blight's Lessee v. Rochester*, 7 Wheat. 535, that a change of allegiance can not be effected without an actual change of domicil. Relying upon this decision, Mr. B. R. Curtis, formerly an associate justice of the Supreme Court of the United States, rendered an opinion to the effect that one did not cease to be a citizen of the United States who, for the purpose of obtaining protection for his vessels, placed them under the Hamburg flag, and, in order to do so, took the citizen's oath to be true and faithful to the Free and Hanseatic Town of Hamburg. The oath contained no renunciation of native allegiance. 3 Moore's Int. Law Digest, 721.

Assistant Secretary Porter, on August 18, 1887, held that citizens of the United States, who take the oath of fealty promulgated as a part of the new constitution of Hawaii, remain citizens of the United States, and are entitled to

be regarded and protected as such. For. Rel. 1895, pt 2, 849.

The oath mentioned was "to support the constitution, laws, and government of the Republic of Hawaii."

But in the case of J. F. Bowler, a citizen of the United States, who, in 1895, took an oath to support the constitution and laws of the Hawaiian Islands, and bear true allegiance to the King, without expressly renouncing or reserving his allegiance to the United States, Secretary Gresham said that Bowler had "manifested his intention of abandoning his American citizenship by taking the oath to support the constitution and laws of Hawaii, and bear true allegiance to the King, and, so far as is known, he manifested no contrary intention before his arrest. The oath is inconsistent with his allegiance to the United States. By taking it he obligated himself to support the government of his adoption, even to the extent of fighting its battles in the event of war between it and the country of his origin. He could not bear true allegiance to both governments at the same time. The President directs that you inform Mr. Bowler he is not entitled to the protection of the United States." For. Rel. 1895, pt. 2, 853.

And in the case of Frank Godfrey, an American citizen who had taken the oath of denization in the Hawaiian Islands, Secretary Olney, on November 13, 1895, said: "Under the decisions of my predecessor, his taking the oath and voluntarily subjecting himself to accountability to the laws of the Hawaiian Republic, and to performance of all the duties and obligations of a citizen thereof, constitute naturalization for all Hawaiian purposes, while within Hawaiian jurisdiction, and the phrase that 'these letters are without prejudice to his native allegiance,' can have no significance, either as to his status within Hawaiian jurisdiction, or as to his status within the jurisdiction of the United States, should he return

hither, for, in the latter case, it would be determinable by the laws of this country, and not by any administrative act of Hawaii." Mr. Olney to the United States Minister in Hawaii, For. Rel. 1895, pt. 2, 867.

And Secretary Hay, in the case of certain American citizens (colored), who had gone to Liberia, and by taking out an allotment of land, became for all national purposes Liberian citizens (no oath of allegiance being required), declared that the principle involved in this case was substantially the same as in the Bowler and Godfrey cases. He said: "The Republic of Liberia is an independent sovereignty, in no wise bound to or dependent upon the United States, and theoretically at least, it is within the range of possibilities that differences might arise between the two governments leading even to rupture of relations. It is inconsistent for an individual to bear true allegiance at the same time to two different sovereigns, and the exercise of the rights of citizenship under any alien sovereignty must be regarded as a voluntary assumption of the obligations of allegiance to such sovereignty." 3 Moore's Int. Law Digest, 730.

C. By Residence in a Foreign Country.

The Act of March 2, 1907, provides that when a naturalized citizen of the United States shall have resided for two years in the foreign state from which he came, or five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen (Sec. 2). In consequence of this provision, the executive order of President Roosevelt of April 6, 1907 (printed in full in the Appendix, post), directed certain changes to be made in the diplomatic and consular regulations, in order to bring them into conformity with the new law, and the following circular instructions to the United States diplomatic and consular officers relative to expatriation were thereafter issued by the Department of

State under date of April 19, 1907, bringing the provisions of the new law to their attention and making the rules and regulations authorized by the second section of the second paragraph of the Act.

*To the Diplomatic and Consular Officers
of the United States.*

GENTLEMEN: Paragraph 144 of the Diplomatic Instructions and Consular Regulations, as amended by Executive order of April 6, 1907, reads as follows:

"144. Expatriation.—An American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state. When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen, and his place of general abode shall be deemed his place of residence during the said years; Provided, That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe.

"An American citizen shall not be allowed to expatriate himself when this country is at war.—Act of March 2, 1907, Sec. 2."

The text of the law is appended for your information.*

Whenever it comes to the knowledge of a diplomatic or consular officer that an American citizen has secured naturalization in a foreign state in conformity with its laws, or has taken an oath of allegiance to a foreign state, such diplomatic or consular officer should certify to the facts under his seal and should transmit the certification to this Department. If the citizen who has thus acquired foreign naturalization was a naturalized citizen of the United States, the fact should be stated in the certification and the certificate of American naturalization should, if possible, be taken up and forwarded

* For the text of the law see Appendix, post.

to the Department with the certification. The form of the certification shall be as follows:

I, A. B., [name and rank of certifying officer], hereby certify that C. B., a citizen of the United States by birth (or naturalization), has secured naturalization as a citizen of, the proof of such naturalization being as follows :

(If he was a citizen of the United States by naturalization, a statement of the date and place of his naturalization in the United States should follow.)

In testimony whereof I have hereunto signed my name and affixed my seal of office.

[L. S.]

When a naturalized citizen of the United States has resided for two years in the country of his origin, or for five years in any other country, this fact creates a presumption that he has ceased to be an American citizen; but the presumption may be overcome by his presenting to a diplomatic or consular officer proof establishing the following facts :

(a.) That his residence abroad is solely as a representative of American trade and commerce, and that he intends eventually to return to the United States permanently to reside; or,

(b.) That his residence abroad is in good faith, for reasons of health or for education, and that he intends eventually to return to the United States to reside; or,

(c.) That some unforeseen or controlling exigency beyond his power to foresee has prevented his carrying out a bona fide intention to return to the United States within the time limited by law, and that it is his intention to return and reside in the United States immediately upon the removal of the preventing cause.

The evidence required to overcome the presumption must be of the specific facts and circumstances which bring the alleged citizen under one of the foregoing heads, and mere assertions, even under oath, that any of the enumerated reasons exist will not be accepted as sufficient.

Whenever evidence shall be produced to overcome the presumption of expatriation from residence abroad, as indicated in this instruction, the affidavit or affidavits must be made in duplicate, one copy thereof being sent

forthwith to this Department, and if the affidavits or other evidence have been presented to a consular officer he shall notify the embassy or legation in the country in which he is resident of the name of the person and of the facts concerning his residence abroad.

So much of this instruction as relates to residence abroad is not applicable to natural-born citizens of the United States. Their status, so far as their right to the protection of this Government is concerned, is governed by existing instructions of this Department and especially by so much of the circular instruction of March 27, 1899, as applies to them, which is appended to this instruction for your information.*

I am, gentlemen, your obedient servant,

ELIHU ROOT.

*The circular of March 27, 1899, reads as follows:

PASSPORTS FOR PERSONS RESIDING OR SOJOURNING ABROAD.

DEPARTMENT OF STATE,

WASHINGTON, March 27, 1899.

*To the Diplomatic and Consular Officers
of the United States.*

GENTLEMEN:

A condition precedent to the granting of a passport is, under the law and the rules prescribed by authority of the law, that the citizenship of the applicant and his domicile in the United States and intention to return to it with the purpose of residing and performing the duties of citizenship shall be satisfactorily established. One who has expatriated himself can not, therefore, receive a passport.

Expatriation has been defined by Mr. Hamilton Fish as "the quitting of one's country, with an abandonment of allegiance and with the view of becoming permanently a resident and citizen of some other country, resulting in the loss of the party's preexisting character of citizenship." Thus, a person "may reside abroad for purposes of health, of education, of amusement, of business, for an indefinite period; he may acquire a commercial or civil domicile there, but if he do so sincerely and bona fide *animo revertendi*, and do nothing inconsistent with his preexisting allegiance, he will not thereby have taken any step towards self-expatriation. But if, instead of this, he permanently withdraws himself and his property and places both where neither can be made to contribute to the national necessities, acquires a political domicile, and avows his purpose not to return, he has placed himself in the position where his country has the right to presume that he has made his election of expatriation." . . .

Before the passage of the Act of 1907, some authorities held that in order to effect expatriation there must be a change of residence. "No person can make himself subject to another power while domiciled and resident within a country to which he owes allegiance," said Secretary Fish to the President, August 25, 1873. For Rel. 1873, pt. 2, 1187; The Santissima Trinidad, 7 Wheat. 283.

In *Comitis v. Parkerson*, 22 L. R. A. 148, 56 Fed. 556, where a woman, a native of Louisiana, married a subject of Italy and lived with her husband in Louisiana until

But even where expatriation may not be established, a person who is permanently resident and domiciled outside of the United States can not receive a passport. "When a person *who has attained his majority* removes to another country and settles himself there, he is stamped with the national character of his new domicile; and this is so, notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period, and the presumption of law with respect to residence in a foreign country, especially if it be protracted, is that the party is there *animo manendi*, and it lies upon him to explain it." Mr. Fish to the President, For. Rels. 1873, 1186, et seq. If, in making application for a passport, he swears that he intends to return to the United States within a given period, and afterwards, in applying for a renewal of his passport, it appears that he did not fulfil his intention, this circumstance awakens a doubt as to his real purpose, which he must dispel. For. Rels. 1890, 11.

The treatment of the individual cases as they arise must depend largely upon attendant circumstances. When an applicant has completely severed his relations with the United States; has neither kindred nor property here; has married and established a home in a foreign land; has engaged in business or professional pursuits wholly in foreign countries; has so shaped his plans as to make it impossible or improbable that they will ever include a domicile in this country—these and similar circumstances should exercise an adverse influence in determining the question whether or not a passport should issue. On the other hand, a favorable conclusion may be influenced by the fact that family and property connections with the United States have been kept up; that reasons of health render travel and return impossible or inexpedient; and that pecuniary exigencies interfere with the desire to return. But the circumstance which is perhaps the most favorable of all is that the applicant is residing abroad in representation and extension of legitimate American enterprises. . . .

I am, gentlemen, your obedient servant,

JOHN HAY.

his death, the latter never becoming naturalized, it was held that the widow, who continued to reside in the United States, was a citizen of the United States; that expatriation must be effected by removal from the country; and that, in the absence of an Act of Congress authorizing it, there can be no implied renunciation of citizenship by an American woman marrying an alien. For the opposite view, see *Pequignot v. Detroit*, 16 Fed. 211.

While residence of a naturalized citizen of the United States in a foreign country is not sufficient evidence of expatriation, long continued residence abroad raises a presumption of abandonment of citizenship.

The presumption of law, with respect to residence in a foreign country, especially if it be protracted, is that the party is there "*animo manendi*," and it lies upon him to explain it.

A person "may reside abroad for purposes of health, of education, of amusement, of business, for an indefinite period; he may acquire a commercial or a civil domicile there; but, if he does so sincerely and *bona fide animo revertendi*, and do nothing inconsistent with his pre-existing allegiance, he will not thereby have taken any step towards self-expatriation. But if, instead of this, he permanently withdraws himself and his property, and places both where neither can be made to contribute to the national necessities, acquires a political domicile in a foreign country, and avows his purpose not to return, he has placed himself in the position where his country has the right to presume that he has made his election of expatriation." Secretary Fish to the President, For Rel. 1873, pt. 2, 1188, 1189.

"It not infrequently happens that naturalization is almost immediately followed by the return of the naturalized person to his native country, and his continued residence there, without having acquired property or

established any permanent relations of family or of business in the United States. Again, cases are of frequent occurrence of naturalized persons who have resided for years in the country of nativity, manifesting no purpose of returning to the United States and exhibiting no interest in the government, but who assert American citizenship only when called upon to discharge some duty in the country of their residence; thus making the claim to American citizenship the pretext for avoiding duties to one country, while absence secures them from duties to the other. These are among the class of cases where the continued residence in the country of nativity, and the absence of apparent purpose of returning, may be taken at least as *prima facie* evidence of expatriation." *Id. For. Rel.* 1873, pt. 2, 1191.*

Voluntary expatriation by a naturalized citizen, which forfeits a right to diplomatic intervention, may be inferred from a long residence abroad in the place of his birth, by nonpayment of taxes and nonpossession of property in this country, and by failure to express an intention to return. 2 Wharton's *Int. Law Digest*, 368.

Persons voluntarily emigrating from the United States to take up a permanent abode in a foreign land "cease to be citizens of the United States, and can have, after such a change of allegiance, no claims to protection as such citizens from our government." 2 Wharton's *Int. Law Digest*, 447.

The theory and practice of this government proceed upon the principle that citizenship involves duties and obligations as well as rights, and an evasion of the duties and obligations by continued residence abroad works a forfeiture of the right to protection from the authorities

*The views of Mr. Fish upon the subject of expatriation were embodied by Secretary Hay in a circular dated March 27, 1899, entitled: "Passports for Persons Residing or Sojourning Abroad," printed in the note on pages 343-4, *supra*.

of the United States. Mr. Fish to Mr. Niles, MSS. Dom. Let., October 30, 1871; Mr. Evarts to Mr. Logan, March 9, 1881, MSS. Inst. to Cent. America.

In determining whether expatriation has taken place in any given case, the intent of the party or absence of intent to return to the United States is a very material element.

The provision of the law of 1907 that a residence of two years in the country from which a naturalized citizen came shall create a presumption that he has ceased to be an American citizen, is analogous to the provision in several of the naturalization treaties of the United States with other countries whereby the residence of a naturalized citizen in the land of his nativity, without intent to return to the United States, is declared to work of itself a renunciation of the citizenship acquired by such naturalization, and that such intent may be held to exist when the residence continues for more than two years.

The adoption of this period of two years as that when the intent not to return to the United States may be held to exist on the part of the naturalized citizen who has returned to his native country indicates that, while the principle on which rests the right of protection while in foreign countries of the naturalized citizen is the same with that of the native-born citizen, there is an appreciation of the strong proclivity to resume his original citizenship, on the part of him who, having wandered from home, returns to find the attractions of early associations and of family ties enticing him at a period, perhaps, when the restlessness and spirit of adventure of the fresher years of life have passed, to rest and to end his days amid the scenes of his childhood or youth, and among those who claim the strong ties of common blood. Hence, the evidence would be more readily obtained to determine that a naturalized citizen who had returned to the

country of his nativity should be deemed to have expatriated himself, or, perhaps, it would be more proper to say, to have rehabilitated himself with his original citizenship, than to show that a native-born citizen had expatriated himself by the same period of foreign residence. Secretary Fish to the President, August 25, 1873, For Rels. 1873, pt. 2, 1190, 1191.

Under the provision in the naturalization treaty with the North German Confederation, that the "intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country," it is held that the two years' residence is merely *prima facie* evidence of abandonment of nationality, and may be rebutted. 2 Wharton's Int. Law Digest, 379.

While the intent to remain in the country of birth may be held to exist after two years' continuous residence, it is in reality not so held without special circumstances showing, either an intent to remain permanently, or the absence of all intent to return to the United States. *Id.*

By the express terms of the Act of 1907, the presumption of expatriation "may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe." Sec. 2.*

A naturalized citizen may forfeit his citizenship before the expiration of the period mentioned.

When a citizen of the United States goes abroad without any intention to return, he forfeits, with the abandonment of his country, all right to the protection of its government. 2 Wharton's Int. Law Digest, 450.

A citizen of the United States, who, being of a lawful age, leaves the United States and establishes himself in a foreign country, without any definite intention to

*For the rules and regulations adopted by the Department of State in pursuance of this authority, see pages 341-343, *supra*.

return to the United States, is to be considered as having expatriated himself. Decision of Arbitrators in American and Spanish Claims Commission, Convention of 1871 (17 Stat. at L. 839), 3 Moore's International Arbitrations, 2565.

The position of the Department of State, where an American citizen goes to a foreign country and settles there *animo manendi*, is that he thereby forfeits the right to the protection of this government, and is to be considered as having expatriated himself. Acting Secretary Hill to Mr. Pioda, June 14, 1901, For. Rel. 1901, 511.

Instructions of the Department of State Relative to Election of American Citizenship by Minors Abroad.

Naturalized citizens are not the only citizens of this country who are within the scope of the Act of March 2, 1907. Its prescriptions affect a certain class of natural-born citizens also.

Under Section 6 of the Act of 1907, it is provided that children born abroad to an American father must register in an American consulate when eighteen years of age and take the oath of allegiance at twenty-one, in order to receive the protection of the United States. That provision reads as follows :

"Sec. 6. That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of

allegiance to the United States upon attaining their majority."

An appropriate change was accordingly made by the Executive Order of April 6, 1907,* in the diplomatic and consular regulations, and in furtherance of the new provision of law the following circular instruction, dated April 19, 1907, was addressed by the Department of State to the American diplomatic and consular officers:

Children of Citizens Born Abroad.

DEPARTMENT OF STATE,
WASHINGTON, *April 19, 1907.*

*To the Diplomatic and Consular Officers
of the United States.*

GENTLEMEN: Paragraph 138 of the Instructions to Diplomatic Officers and of the Consular Regulations, as amended by the Executive order of April 6, 1907, reads as follows:

"138. Children of Citizens Born Abroad.—All children born out of the limits and jurisdiction of the United States whose fathers were at the time of their birth citizens thereof are citizens of the United States; but the rights of citizenship do not descend to children whose fathers never resided in the United States. All children who are, in accordance with this paragraph, born citizens of the United States, and who continue to reside outside of the United States, are required in order to receive the protection of this government, upon reaching the age of eighteen years to record at an American Consulate their intention to become residents and remain citizens, and upon reaching their majority are further required to take the oath of allegiance to the United States. R. S. Sec. 1993; Act of March 2, 1907, Sec. 6."

Appended is the text of Section 1993 of the Revised Statutes and of Section 6 of the Act of March 2, 1907.

You are instructed that children born abroad whose parents were American citizens at the time of their birth

* For the text of the order see Appendix, post.

should report to a convenient American consul upon reaching the age of 18 years and before they have reached the age of 19 years and make a solemn declaration in the following form:

I, A. B., born in, on....., of parents who were at the time of my birth American citizens, do solemnly declare that it is my intention and desire to remain a citizen of the United States and to become a resident thereof. My father acquired citizenship through birth (or naturalization) (if by birth state where the father was born; if by naturalization state when and where he was naturalized, as shown by record evidence of such naturalization.)

This statement should be made in triplicate, one copy being sent forthwith to the embassy or legation in the country in which the consulate is situated, one to the Department, and one to be retained and filed in the consulate.

Upon reaching the age of 21 years and before they have reached the age of 22 years, such children are required to take before a convenient consul the following oath (or affirmation):

I, A. B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion. So help me God.

This oath or affirmation should be made in triplicate, one copy being sent forthwith to the embassy or legation in the country in which the consulate is situated, one to the Department, and one to be retained and filed in the consulate.

Diplomatic and consular officers are instructed to make every effort necessary to bring the requirements of the law to which this instruction relates to the attention of those whom it will affect.

I am, gentlemen, your obedient servant,

ELIHU ROOT.

Instructions of the Department of State Relative to Registration of American Citizens Abroad.

In order to accomplish more effectually the purposes of the provisions of the Act of 1907, the President on April 8, 1907, by Executive order supplementing his order of the 6th of the same month, amended paragraph 172 of the consular regulations and provided for the keeping of a detailed registry of American citizens within the consular jurisdiction. This order was brought to the attention of the American diplomatic and consular officers in a circular instruction of the Department of State, dated April 19, 1907, which reads:

DEPARTMENT OF STATE,

WASHINGTON, April 19, 1907.

*To the Diplomatic and Consular Officers
of the United States.*

GENTLEMEN: Paragraph 172 of the Consular Regulations, as amended by the Executive order of April 8, 1907, reads as follows:

"172. Registration of American Citizens.—Principal consular officers should keep at their offices a register of all American citizens residing in their several districts, and will therefore make it known that such a register is kept and invite all resident Americans to cause their names to be entered therein. The same general principles govern applications for registry which govern applications for passports. Paragraph 151.

"The register should show the date of registration, the full name of the person registered, the date and place of his birth, the place of his last domicile in the United States, the date of his arrival in the foreign country where he is residing and his place of residence therein, the reasons for his foreign residence, whether or not he is married, and if married the name of his wife, her place of birth and residence, and if he has children the name, date, and place of birth and residence of each.

The nature of the proof accepted to establish his citizenship should also appear, and his signature should be inscribed in the register.

"Consuls may issue certificates of the registration prescribed above for use with the authorities of the place where the person registered is residing. Each certificate shall set forth the facts contained in the register and shall be good for use for one year only and shall be in a form prescribed by the Secretary of State (Form No. —). When a certificate expires a new one may be issued, the old one being destroyed, if it is clearly shown that the residence abroad has not assumed a permanent character. Persons who hold passports which have not expired shall not be furnished with certificates of registration, and it is strictly forbidden to furnish them to be used for traveling in the place of passports. Returns of all registrations made and of all certificates of registration issued shall be made to the embassy or legation in the country in which the consulate is situated and to the Secretary of State at intervals and under regulations to be prescribed by him. No fee will be charged for registration nor for any service connected therewith, nor for certificates of registration.

"This paragraph shall go into effect July 1, 1907."

Books for registration are being prepared and will be furnished to consuls as soon as possible. In the meantime, after July 1, consuls will register American citizens, following carefully the requirements of the paragraph quoted above, and will carefully preserve the registrations and enter them in the register of American citizens as soon as the books for that purpose shall have been received.

The certificate of registration shall be in the following form:

I,.....[name of consul], Consul of the United States of America at.....[name of place], hereby certify that[name of person registered] is registered as an American citizen in this consulate. He was born.....[date of birth] at.....[place of birth] and is a citizen of the United States by (birth or naturalization). He arrived in.....[place of foreign residence] on.....

[date], where he is now residing for the purpose of
[reason why residing in foreign place]. He is married to
.....[name of wife], who was born in.....[place of
birth of wife], and resides at.....[place of wife's resi-
dence].

He has the following children:

.....[name of child] born in[place of birth]
on[date of birth] and residing at[place of
residence]; and[name of child] born in
[place of birth] on[date of birth] and residing at
.....[place of residence]; and[name of child]
born in[place of birth] on[date of birth]
and residing at[place of residence]; his citizen-
ship of the United States is established by[nature
of proof of citizenship produced].

This certificate is not a passport and its validity ex-
pires on[date of expiration].

The following is the signature of[person regis-
tered].

In testimony whereof I have hereunto signed my name
and affixed the seal of this consulate.

[L. S.]

.....,
American Consul.

Immediately upon the registration of an American
citizen the fact of such registration should be certified
to the embassy or legation in the country in which the
consulate is situated, and a duplicate of the registration
should be forthwith sent to this Department, together
with a statement whether a certificate of registration has
been issued.

When a certificate of registration shall have expired
and a new one has been issued, notice of this fact should
be sent immediately to the embassy or legation in the
country in which the consulate is situated and to this
Department.

American citizens resident abroad are required to
register each year, and any additional facts concerning
residence, marriage, and children should be noted in the
register, but the full registration having been made once
need not be repeated on each subsequent registration.

The Department expects consuls to observe this re-
quirement with great care, and if they are uncertain

concerning any of their duties in relation thereto they should ask for instructions from the Department.

I am, gentlemen, your obedient servant,

ELIHU ROOT.

Exceptions; Expatriation not Accomplished:

(A) When Residence Abroad is Due to Ill Health or Financial Condition.

In an instruction to the diplomatic and consular officers of the United States, March 27, 1899,* Secretary Hay stated that a favorable conclusion in determining whether a passport shall be granted to one residing abroad may be influenced by the fact that reasons of health render travel and return to the United States impossible or inexpedient; and that pecuniary exigencies interfere with the desire to return.

In the case of Strahlheim, which arose in Switzerland in 1902, where it was shown that the applicant was prevented from returning to the United States, where he was born, by precarious health and impecunious circumstances, it was held that he was entitled to a passport. Mr. Hay to Mr. Hardy, May 20, 1902, For. Rel. 1902, 975.

(B) Agents of American Enterprises.

An American, whether by birth or by naturalization, residing abroad, in representation of an American business, and keeping up an interested association with this country, is not deemed to have forfeited his nationality by residence abroad. See Hunt's American Passport, 206.

"Were we to hold that citizens of the United States can not, without forfeiting their nationality, reside from time to time in South American states as agents of their countrymen, the business of both continents would receive a heavy blow. In affairs so vast, so intricate, and so continuous as those of Alsop & Co., for instance, there can be neither consistency nor responsibility of

*Printed in note on pages 343-4, *supra*.

action except through trusted agents, who, while taking up continuous abode in their places of business action in South America, would from early personal relations be in the confidence of their chiefs, making their central business in this country the place to which their domiciliary duties would relate, and continuing to subject themselves to the laws of the country in which the firm is domiciled. As a matter of public policy, therefore, as well as of international law, I can not but conclude that Mr. Wheelwright's domicil and nationality are in the United States." Mr. Bayard to Mr. Roberts, March 20, 1886, 2 Wharton's Int. Law Digest, 369, 370.

An exception has been made in the case of agents of American business houses who are engaged in foreign lands in promoting trade with the United States. Mr. Gresham to Mr. Runyon, November 1, 1894, American Passport, 209.

In enumerating the circumstances which should exercise an influence in determining whether or not a passport should issue to a person residing abroad, Secretary Hay states that "the circumstance which is, perhaps, the most favorable of all is that the applicant is residing abroad in representation and extension of legitimate American enterprises." Circular Instructions to Diplomatic and Consular Officers, March 27, 1899, pages 343-4, *supra*, note.

(c.) Missionaries .

Our legations have been authorized to issue passports to missionaries in foreign lands whose residence there was continuous and practically permanent, and who could not allege any definite intention of returning to and residing in the United States. Mr. Gresham to Mr. Runyon, November 1, 1894, American Passport, 209.

The presumption of abandonment of nationality by

long residence abroad is rebutted by proof that such residence was that of a missionary, who never intended to relinquish his nationality or his purpose finally to return home. Mr. Everett to Mr. Marsh, February 5, 1853, 2 Wharton's Int. Law Digest, 360.

(d.) **By Marriage.**

See "Naturalization by Marriage," for a full consideration of the subject of "expatriation by marriage," pp. 227-263, *supra*.

2. Desertion.

A fifth way in which expatriation may be effected is by desertion from the Army or Navy.

By Section 1996 of the Revised Statutes, deserters from the military or naval service of the United States who did not return or report themselves to a provost-marshal within sixty days after March 11, 1865, were deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as the right to become citizens; and such deserters were declared to be forever incapable of holding office or exercising any rights of citizenship.

Section 1997 provided that no soldier or sailor who faithfully served until April 19, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but that section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under Section 1996, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Section 1998 provides that "every person who hereafter deserts the military or naval service of the United

States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of Section nineteen hundred and ninety-six."

This law relative to desertion is applicable only where the person has been convicted of the offense by court-martial. *Goetscheus v. Matthewson*, 61 N. Y. 420; *Holt v. Holt*, 59 Me. 464.

The law means that the forfeiture which it prescribes, like all other penalties for desertion, must be adjudged to the convicted person, after trial by a court-martial, and sentence approved. *Huber v. Reily*, 53 Pa. St. 112.

The conviction must be proved by a duly authenticated record. *Goetscheus v. Matthewson*, *supra*.

3. Military or Naval Service in Foreign Country.

Merely entering into the military or naval service of a foreign sovereign does not, of itself, work expatriation. *Chacon v. 89 Bales of Cochineal*, 1 Brock. 478; *The Santissima Trinidad*, 7 Wheat. 283; *State v. Adams*, 45 Iowa, 99.

In *Calais v. Marshfield*, 30 Me. 511, it was held that the voluntary performance by a citizen of the United States of service in the local militia, was insufficient to effect expatriation.

Assistant Secretary Rives on January 5, 1888, in response to an inquiry of the United States Consul General at Honolulu, whether citizens of the United States by enlisting in the army in Hawaii, relinquished their American nationality, said: "Citizens of the United States do not lose their nationality by enlisting in foreign armies." *For. Rel.* 1895, 850.

Acting Secretary Hunter in an instruction to the consul at Cordoba, September 10, 1880, said: "Enlistment in the military or naval service of a foreign power is not of itself a renunciation of American citizenship." 3 Moore's Int. Law Digest, 732.

And Secretary Bayard in an instruction to the American legation in Mexico, November 14, 1888, affirming the same principle, said that besides the generally recognized principles of international usage, there were historical precedents which emphasized the position of this government in respect of its citizens temporarily abroad. "As evidence of this," said he, "it may be stated that entering the military service of a foreign state is by itself in no sense an abjuration of prior nationality. In our Revolutionary war over six thousand Frenchmen were enlisted in our armies, either in our marine forces or as auxiliaries, but the cases in which those thus serving accepted an American nationality were very few. This government never maintained, nor did France ever concede, that this enlisting into our service had any effect on their nationality. . . . La Fayette was a major-general in our service, but during the diplomatic controversies that arose as to him subsequently, when he was a prisoner in Austria this government never claimed that he was a citizen of the United States, or that he ever ceased to be a Frenchman." 3 Moore's Int. Law Digest, 734.

On the other hand, however, a citizen of Illinois, under the declaration adopted by the convention of Texas, in 1835, promising citizenship and donations of land to all volunteers in her war for independence, who afterwards entered her army as a volunteer, and who died in her service, was held to have become a citizen of Texas; and it was also decided that his wife's citizenship

followed his, though she never came to Texas. *Kircher v. Murray*, 54 Fed. 617.

It was held by Acting Secretary Seward, in 1879, that James W. Smith, an American citizen, by the act of voluntarily taking military service under the government of Mexico, while a law was in existence by which such an act on his part conferred and involved the assumption of Mexican citizenship, must be deemed to have understandingly conformed to that Mexican law, and of his own accord embraced Mexican citizenship. Mr. Seward to Mr. Foster, August 13, 1879, For. Rel. 1879, 824.

4. Accepting Public Office under a Foreign Government.

(A) Engaging in the Diplomatic Service of a Foreign Government.

In Corvaia's case, which came before the Italian-Venezuelan Commission in 1903, Mr. Ralston, umpire, held that one who accepts, without permission of his government and against her laws, employment in the diplomatic service of another government, loses his citizenship. Ralston's Report, 808, 809.

(B) Engaging in the Consular Service of a Foreign Government.

In *Fish v. Stoughton*, 2 Johns. Cas. 407, the court held that a citizen of the United States did not expatriate himself by accepting an appointment as consul of a foreign state and the performance of duties in that capacity.

A naturalized citizen of the United States, of Swiss origin, was advised by the Department of State, in 1869,

that he could not divest himself of his American citizenship by accepting the office of Swiss vice-consul at New York, but must, in order to accomplish that result, return to Switzerland with the intention to reside there, or else be naturalized in some third country. 3 Moore's Int. Law Digest, 716.

(C) Entrance into Civil Service of Foreign Country.

Entrance into the civil service of the country of his nativity, by a naturalized citizen of the United States, who has returned to that country, and continues his residence there beyond the length of time at which, by convention between the two states, the intent not to return to the country of adoption may be held to exist, must be taken to be very strong evidence of the absence of intent to return, and must raise a presumption, which might, and probably would, make it very difficult for the country of adoption to assert the continued citizenship of the party thus taking service and continuing to reside in the country of his nativity. Mr. Fish to Mr. Müller, January 28, 1874, 2 Wharton's Int. Law Digest, 367.

Assistant Secretary Rives, in an instruction to the consul-general at Apia, January 6, 1888, said that tenure of office under the Samoan government, unless it required the assumption of Samoan citizenship, could not of itself be treated as an act of expatriation, as there is nothing in the Constitution or laws of the United States that precludes a private citizen of the United States from rendering official services to foreign governments. 3 Moore's Int. Law Digest, 718.

Such acts, in addition to the selection and enjoyment of a foreign domicile, as amount to a renunciation of United States citizenship and a willingness to submit

to, or adopt, the obligations of a citizenship of the country of domicile, such as accepting public employment, etc., may be treated as effecting expatriation. 14 Ops. Atty. Gen. 295.

Under the existing law, providing that an American citizen shall be deemed to have expatriated himself when he has taken an oath of allegiance to a foreign state, if the acceptance of office under the foreign government involves the taking of an oath of allegiance to that government, this, of course, operates to expatriate him.

CHAPTER VI.

PASSPORTS.

- A. In general.
- B. Statutes.
- C. Rules and regulations.
 - 1. In the United States.
 - 2. In the insular possessions of the United States.
 - 3. Executive order of President Roosevelt, April 6, 1907.
- D. Forms.

A. In General.

The American passport is a document issued by the Secretary of State, or under his authority by a diplomatic or consular officer of the United States abroad (or by an executive officer of the insular possessions of the United States), to a citizen of the United States (or to a person owing allegiance to the United States), stating his citizenship (or status), and requesting for him free passage and all lawful aid and protection during his travels in foreign lands. See American Passport, 4.

B. Statutes.

Until the passage of the Act of Congress of June 14, 1902 (32 Stat. at L. 386, Chap. 1088), amending the statutes of the United States so as to permit the granting of passports to residents of the insular possessions of the United States, passports were only issued to citizens of the United States. The sections of the Revised Statutes, as amended, which govern the subject, are as follows:

“Sec. 4075 [U. S. Comp. Stat. 1901, 2764]. The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the United States, and by such chief or other executive officer of the insular possessions of the United States, and under such rules as the President shall designate and prescribe for and on behalf of the United States; and

no other person shall grant, issue, or verify any such passport. Where a legation of the United States is established in any country no person other than the diplomatic representative of the United States at such place shall be permitted to grant or issue any passport, except in the absence therefrom of such representative.

"Sec. 4076 [U. S. Comp. Stat. 1901, 2765]. No passport shall be granted or issued to, or verified for, any other persons than those owing allegiance, whether citizens or not, to the United States."

Sec. 1, Act of March 2, 1907: "The Secretary of State shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years a passport may be issued to him entitling him to the protection of the government in any foreign county. *Provided*, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this government in the country of which he was a citizen prior to making such declaration of intention.

"Sec. 4077 [U. S. Comp. Stat. 1901, 2765]. All persons who shall be authorized to grant, issue, or verify passports shall make return of the same to the Secretary of State, in such manner and as often as he shall require; and such returns shall specify the names and all other particulars of the persons to whom the same shall be granted, issued, or verified, as embraced in such passports.

"Sec. 4078 [U. S. Comp. Stat. 1901, 2766]. If any person acting, or claiming to act, in any office or capacity, under the United States, its possessions, or any of the states of the United States, who shall not be lawfully authorized so to do, shall grant, issue, or verify any pass-

ports or other instrument in the nature of a passport, to or for any person whomsoever, or if any consular officer who shall be authorized to grant, issue, or verify passports shall knowingly and wilfully grant, issue, or verify any such passport to or for any person not owing allegiance, whether a citizen or not, to the United States, he shall be imprisoned for not more than one year, or fined not more than five hundred dollars, or both; and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody."

An excellent historical sketch of the American passport, together with a digest of the laws, rulings, and regulations governing its issuance by the Department of State, was prepared by Mr. Gaillard Hunt, chief of the passport bureau of that Department, and published by the government printing office in 1898, under the title of "The American Passport."

C. Rules and Regulations Governing the Granting and Issuance of Passports, Prescribed by the President.

The following are the existing rules and regulations governing the granting of passports, prescribed by the President:

1. Rules Governing the Granting and Issuing of Passports in the United States.

1. By Whom Issued.—No one but the Secretary of State may grant and issue passports in the United States. Rev. Stat. Secs. 4075, 4078 [U. S. Comp. Stat. 1901, 2764, 2766].

A person who is entitled to receive a passport if temporarily abroad should apply to the diplomatic representative of the United States in the country where he happens to be; or, in the absence of a diplomatic representative, to the consul general of the United States;

or, in the absence of both, to the consul of the United States. The necessary statements may be made before the nearest consular officer of the United States.

Application for a passport by a person in one of the insular possessions of the United States should be made to the chief executive of such possession.

(The evidence required of a person making application abroad or in an insular possession of the United States is the same as that required of an applicant in the United States.)

2. To Whom Issued.—The law forbids the granting of a passport to any person who does not owe allegiance to the United States.*

3. Applications.—A person who is entitled to receive a passport, if within the United States, must make a written application, in the form of an affidavit, to the Secretary of State.

The affidavit must be attested by an officer authorized to administer oaths, and if he has an official seal it must be affixed. If he has no seal, his official character must be authenticated by certificate of the proper legal officer.

If the applicant signs by mark, two attesting witnesses to his signature are required.

The applicant is required to state the date and place of his birth, his occupation, and the place of his permanent residence, and to declare that he goes abroad for temporary sojourn, and intends to return to the United States with the purpose of residing and performing the duties of citizenship therein.

The applicant must take the oath of allegiance to the Government of the United States.

The application must be accompanied by a description

*For the exception, contained in the first section of the Act of March 2, 1907, in favor of persons who have declared their intention to become citizens and have resided in the United States for three years. See pages 371-373, post.

of the person applying, and should state the following particulars, viz.: Age,; stature,feet..... inches (English measure); forehead,; eyes,; nose,; mouth,; chin,; hair,; complexion,; face,

The application must be accompanied by a certificate from at least one credible witness that the applicant is the person he represents himself to be, and that the facts stated in the affidavit are true to the best of the witness' knowledge and belief.

4. Native Citizens.—An application containing the information indicated by rule 3 will be sufficient evidence in the case of native citizens; but a person of the Chinese race, alleging birth in the United States, must accompany his application with supporting affidavits from at least two credible witnesses, preferably not of the Chinese race, having personal knowledge of the applicant's birth in the United States.

5. A Person Born Abroad, Whose Father was a Native Citizen of the United States.—In addition to the statements required by rule 3, his application must show that his father was born in the United States, resided therein, and was a citizen at the time of the applicant's birth. The Department may require that this affidavit be supported by that of one other citizen acquainted with the facts.

6. Naturalized Citizens.—In addition to the statements required by rule 3, a naturalized citizen must transmit his certificate of naturalization, or a duly certified copy of the court record thereof, with his application. It will be returned to him after inspection. He must state in his affidavit when and from what port he emigrated to this country, what ship he sailed in, where he has lived since his arrival in the United States, when and before what court he was naturalized, and that he is the identical person described in the certificate of naturalization.

The signature to the application should conform in orthography to the applicant's name as written in his certificate of naturalization.

7. Woman's Application.—If she is unmarried, in addition to the statements required by rule 3, she should state that she has never been married. If she is the wife of a native citizen of the United States the fact should be made to appear in her application. If she is the wife or widow of a naturalized citizen, in addition to the statements required by rule 3, she must transmit for inspection her husband's certificate of naturalization, must state that she is the wife (or widow) of the person described therein, and must set forth the facts of his emigration, naturalization, and residence, as required in the rule governing the application of a naturalized citizen.

(A married woman's citizenship follows that of her husband so far as her international status is concerned. It is essential, therefore, that a woman's marital relations be indicated in her application for a passport, and that in the case of a married woman her husband's citizenship be established.)

8. The Child of a Naturalized Citizen Claiming Citizenship Through the Naturalization of the Parent.—In addition to the statements required by rule 3, the applicant must state that he or she is the son or daughter, as the case may be, of the person described in the certificate of naturalization, which must be submitted for inspection, and must set forth the facts of emigration, naturalization, and residence, as required in the rule governing the application of a naturalized citizen.

9. A Resident of an Insular Possession of the United States, Who Owes Allegiance to the United States.—In addition to the statements required by rule 3, he must state that he owes allegiance to the United States, and that he does not acknowledge allegiance to any other government; and must submit an affidavit from at least

two credible witnesses having good means of knowledge in substantiation of his statements of birth, residence, and loyalty.

10. Expiration of Passport.—A passport expires two years from the date of its issuance. A new one will be issued upon a new application, and, if the applicant be a naturalized citizen, the old passport will be accepted in lieu of a certificate of naturalization, if the application upon which it was issued is found to contain sufficient information as to the naturalization of the applicant.

11. Wife, Minor Children, and Servants.—When the applicant is accompanied by his wife, minor children, or servant who would be entitled to receive a passport, it will be sufficient to state the fact, giving the respective ages of the children and the allegiance of the servant, when one passport will suffice for all. For any other person in the party a separate passport will be required. A woman's passport may include her minor children and servant under the above-named conditions.

(The term "servant" does not include a governess, tutor, pupil, companion, or person holding like relations to the applicant for a passport.)

12. Professional Titles.—They will not be inserted in passports.

13. Fee.—By Act of Congress approved March 23, 1888 [24 Stat. at L. 45, Chap. 34], a fee of \$1 is required to be collected for every citizen's passport. That amount in currency or postal money-order should accompany each application made by a citizen of the United States. Orders should be made payable to the disbursing clerk of the Department of State. Drafts or checks will not be accepted.

14. Blank Forms of Application.—They will be furnished by the Department to persons who desire to apply for passports, but are not furnished, except as samples, to those who make a business of procuring passports.

15. Address.—Communications should be addressed to the Department of State, Passport Bureau, and each communication should give the post-office address of the person to whom the answer is to be directed.

16. Rejection of Application.—The Secretary of State has the right, in his discretion, to refuse to issue a passport, and will exercise this right towards anyone who he has reason to believe desires it for an unlawful or improper purpose.

Section 4075 of the Revised Statutes of the United States [U. S. Comp. Stat. 1901, 2764], as amended by the Act of Congress, approved June 14, 1902 [32 Stat. at L. 386, Chap. 1088], providing that "the Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the United States, and by such chief or other executive officer of the insular possessions of the United States, and under such rules as the President shall designate and prescribe for and on behalf of the United States," the foregoing rules are hereby prescribed for the granting and issuing of passports in the United States.

The Secretary of State is authorized to make regulations on the subject of issuing and granting passports additional to these rules and not inconsistent with them.

THEODORE ROOSEVELT.

Oyster Bay, New York, September 12, 1903.

The provisions of Rev. Stat. 4076, which prescribe that no passport shall be granted to any person who does not owe allegiance to the United States, and which are embodied in paragraph numbered 2 of the Rules as above printed have been modified by the first section of the Act of March 2, 1907, in favor of persons who have declared their intention to become citizens of the United States as provided by law, and have resided in the

United States for three years. By this law the Secretary of State is authorized, in his discretion, to issue passports to such persons, good for a period of six months. In the exercise of the discretion conferred upon him by the law, the Secretary of State has promulgated the following

Rules Governing the Granting and Issuing of Passports to Those Who Have Declared their Intention to Become Citizens of the United States.

1. The first section of the Act approved March 2, 1907, "in reference to the expatriation of citizens and their protection abroad," provides "That the Secretary of State shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years, a passport may be issued to him entitling him to the protection of the government in any foreign country: *Provided*, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this government in the country of which he was a citizen prior to making such declaration of intention."

2. This section is not intended to confer upon persons who have only declared their intention to become citizens a general right to receive passports upon application. Such passports will be issued only when it is affirmatively shown to the Secretary of State that some special exigency requires the temporary absence of the applicant from the United States, and that without such absence the applicant would be subjected to special hardship or injury.

3. Such passports will not be issued to those who have made the declaration of intention and who have failed,

through their own neglect, to complete their intention and secure naturalization as citizens of the United States; nor to those who may make the declaration of intention in order to secure passports and leave the United States, *nor shall more than one such passport be issued to any applicant.*

4. It is therefore ordered that before a passport shall be issued to anyone who has made the declaration of intention to become a citizen of the United States *the following facts shall be established to the satisfaction of the Secretary of State:*

(a) That the applicant has resided in the United States for at least three years, as provided by law.

(b) That he is not yet eligible under the law for making application for final naturalization.

(c) *That at least six months have elapsed since the applicant's declaration of intention.*

(d) *That the applicant has not previously applied for and obtained a similar passport from this Department.*

(e) That a special and imperative exigency exists requiring the absence of the applicant from the United States. The burden of proof will, in each case, be upon the applicant, to show to the satisfaction of the Secretary of State that there is a necessity for his absence.

(f) That the applicant has not applied for or obtained a passport from any other government since he declared his intention to become a citizen of the United States.

5. Applications must be made in the form of an affidavit to the Secretary of State.

6. The affidavit must be attested by an officer authorized to administer oaths, and if he has an official seal it must be affixed. If he has no seal his official character must be authenticated by certificate of the proper legal officer.

7. If the applicant signs by mark two attesting witnesses to his signature are required.

8. The applicant is required to state the date and place of his birth, his occupation, and the place of his permanent residence, where he intends to travel, how long he expects to remain in each foreign country, for what purpose he is proceeding abroad, the circumstances which make his absence necessary, that he intends to return to the United States, and the probable duration of his absence therefrom.

9. *If any previous application for a similar passport has been denied by the Department, this fact must be stated by the applicant.*

The application must be accompanied by a description of the person applying and should state the following particulars, namely: Age,: stature, feet inches (English measure): forehead,: eyes,; nose,; mouth,; chin,: hair,; complexion,; face,

The application must be accompanied by two supporting affidavits from citizens of the United States, who shall state that the applicant is the person he represents himself to be, how long they have known him, and that the facts stated in his affidavit are true to the best of their knowledge and belief.

ELIHU ROOT.

DEPARTMENT OF STATE,

WASHINGTON, *March 23, 1907.*

2. Rules Governing the Granting and Issuing of Passports in the Insular Possessions of the United States.

Section 4075 of the Revised Statutes of the United States [U. S. Comp. Stat. 1901, 2764], as amended by the Act of Congress, approved June 14, 1902 [32 Stat. at L. 386, Chap. 1088], providing that "the Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the

United States, and by such chief or other executive officer of the insular possessions of the United States, and under such rules as the President shall designate and prescribe for and on behalf of the United States," the following rules are hereby prescribed for the granting and issuing of passports in the insular possessions of the United States:

1. By Whom Issued.—Application for a passport by a person in one of the insular possessions of the United States should be made to the chief executive of such possession.

A person who is entitled to receive a passport if temporarily abroad should apply to the diplomatic representative of the United States in the country where he happens to be; or, in the absence of a diplomatic representative, to the consul general of the United States; or, in the absence of both, to the consul of the United States. The necessary statements may be made before the nearest consular officer of the United States.

2. To Whom Issued.—The law forbids the granting of a passport to any person who does not owe allegiance to the United States.*

3. Applications.—A person who is entitled to receive a passport must make a written application in the form of an affidavit. The affidavit must be attested by an officer authorized to administer oaths, and if he has an official seal it must be affixed. If he has no seal, his official character must be authenticated by certificate of the proper legal officer.

If the applicant signs by mark, two attesting witnesses to his signature are required.

The applicant is required to state the date and place

*For the exception, contained in the first section of the Act of March 2, 1907, in favor of persons who have declared their intention to become citizens and have resided in the United States for three years, see pages 378-380, post.

of his birth, his occupation, and the place of his permanent residence, and to declare that he goes abroad for temporary sojourn, and intends to return to the United States or one of the insular possessions of the United States with the purpose of residing and performing the duties of citizenship therein.

The applicant must take the oath of allegiance to the Government of the United States.

The application must be accompanied by a description of the person applying, and should state the following particulars, viz.: Age,; stature, feet inches (English measure); forehead,; eyes,; nose,; mouth,; chin,; hair,; complexion,; face,

The application must be accompanied by a certificate from at least one credible witness that the applicant is the person he represents himself to be, and that the facts stated in the affidavit are true to the best of the witness' knowledge and belief.

4. Native Citizens of the United States.—An application containing the information indicated by rule 3 will be sufficient evidence in the case of native citizens of the United States.

5. A Person Born Abroad, Whose Father was a Native Citizen of the United States.—In addition to the statements required by rule 3, his application must show that his father was born in the United States, resided therein, and was a citizen at the time of the applicant's birth. The Department may require that this affidavit be supported by that of one other citizen acquainted with the facts.

6. Naturalized Citizens.—In addition to the statements required by rule 3, a naturalized citizen must transmit his certificate of naturalization or a duly certified copy of the court record thereof with his application. It will be returned to him after inspection. He must

state in his affidavit when and from what port he emigrated to this country, what ship he sailed in, where he has lived since his arrival in the United States, when and before what court he was naturalized, and that he is the identical person described in the certificate of naturalization. The signature to the application should conform in orthography to the applicant's name as written in his certificate of naturalization.

7. Woman's Application.—If she is unmarried, in addition to the statements required by rule 3, she should state that she has never been married. If she is the wife of a native citizen of the United States the fact should be made to appear in her application. If she is the wife or widow of a naturalized citizen, in addition to the statements required by rule 3, she must transmit for inspection her husband's certificate of naturalization, must state that she is the wife (or widow) of the person described therein, and must set forth the facts of his emigration, naturalization, and residence, as required in the rule governing the application of a naturalized citizen.

8. The Child of a Naturalized Citizen Claiming Citizenship through the Naturalization of the Parent.—In addition to the statements required by rule 3, the applicant must state that he or she is the son or daughter, as the case may be, of the person described in the certificate of naturalization, which must be submitted for inspection, and must set forth the facts of emigration, naturalization, and residence, as required in the rule governing the application of a naturalized citizen.

9. A Resident of an Insular Possession of the United States, who Owes Allegiance to the United States.—In addition to the statements required by rule 3, he must state that he owes allegiance to the United States, and that he does not acknowledge allegiance to any other government; and must submit an affidavit from at least two credible witnesses having good means of knowledge

in substantiation of his statements of birth, residence, and loyalty.

10. Expiration of Passport.—A passport expires two years from the date of its issuance. A new one will be issued upon a new application, and, if the applicant be a naturalized citizen, the old passport will be accepted in lieu of a certificate of naturalization, if the application upon which it was issued is found to contain sufficient information as to the naturalization of the applicant.

11. Wife, Minor Children, and Servants.—When the applicant is accompanied by his wife, minor children, or servant who would be entitled to receive a passport, it will be sufficient to state the fact, giving the respective ages of the children and the allegiance of the servant, when one passport will suffice for all. For any other person in the party a separate passport will be required. A woman's passport may include her minor children and servant under the above-named conditions.

12. Professional Titles.—They will not be inserted in passports.

13. Rejection of Application.—The chief executive officers of the insular possessions of the United States are authorized to refuse to issue a passport to anyone who, there is reason to believe, desires it for an unlawful or improper purpose, or who is unable or unwilling to comply with the rules.

THEODORE ROOSEVELT.

Oyster Bay, New York, July 19, 1902.

The provisions of Rev. Stat. 4076, which prescribe that no passport shall be granted to any person who does not owe allegiance to the United States, and which are embodied in paragraph numbered 2 of the Rules as above printed, have been modified by the first section of the Act of March 2, 1907, in favor of persons who have

declared their intention to become citizens of the United States, as provided by law, and have resided in the United States for three years. By this law the Secretary of State is authorized, in his discretion, to issue passports to such persons, good for a period of six months. In the exercise of the discretion conferred upon him by the law, there have been issued the following

Rules Governing the Granting and Issuing of Passports to Those Who Have Declared Their Intention to Become Citizens of the United States.

1. The first section of the Act approved March 2, 1907, "in reference to the expatriation of citizens and their protection abroad," provides "That the Secretary of State shall be authorized, in his discretion, to issue passports to persons not citizens of the United States, as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years, a passport may be issued to him entitling him to the protection of the government in any foreign country: *Provided*, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this government in the country of which he was a citizen prior to making such declaration of intention."

2. This section is not intended to confer upon persons who have only declared their intention to become citizens a general right to receive passports upon application. Such passports will be issued only when it is affirmatively shown to the Secretary of State that some special exigency requires the temporary absence of the applicant from the United States, and that without such absence the applicant would be subjected to special hardship or injury.

3. Such passports will not be issued to those who have made the declaration of intention and who have failed, through their own neglect, to complete their intention and secure naturalization as citizens of the United States; nor to those who may make the declaration of intention in order to secure passports and leave the United States, *nor shall more than one such passport be issued to any applicant.*

4. It is therefore ordered that before a passport shall be issued to any one who has made the declaration of intention to become a citizen of the United States *the following facts shall be established to the satisfaction of the Secretary of State:*

(a) That the applicant has resided in the United States for at least three years, as provided by law.

(b) That he is not yet eligible under the law for making application for final naturalization.

(c) *That at least six months have elapsed since the applicant's declaration of intention.*

(d) *That the applicant has not previously applied for and obtained a similar passport from this Department.*

(e) That a special and imperative exigency exists requiring the absence of the applicant from the United States. The burden of proof will, in each case, be upon the applicant to show to the satisfaction of the Secretary of State that there is a necessity for his absence.

(f) That the applicant has not applied for or obtained a passport from any other government since he declared his intention to become a citizen of the United States.

5. Applications must be made in the form of an affidavit to the Secretary of State.

6. The affidavit must be attested by an officer authorized to administer oaths, and if he has an official seal it must be affixed. If he has no seal his official character must be authenticated by certificate of the proper legal officer.

7. If the applicant signs by mark two attesting witnesses to his signature are required.

8. The applicant is required to state the date and place of his birth, his occupation and the place of his permanent residence, where he intends to travel, how long he expects to remain in each foreign country, for what purpose he is proceeding abroad, the circumstances which make his absence necessary, that he intends to return to the United States, and the probable duration of his absence therefrom.

9. *If any previous application for a similar passport has been denied by the Department, this fact must be stated by the applicant.*

The application must be accompanied by a description of the person applying and should state the following particulars, namely: Age,; stature,feetinches (English measure); forehead,; eyes,; nose,; mouth,; chin,; hair,; complexion,; face,

The application must be accompanied by two supporting affidavits from citizens of the United States, who shall state that the applicant is the person he represents himself to be, how long they have known him, and that the facts stated in his affidavit are true to the best of their knowledge and belief.

ELIHU ROOT.

DEPARTMENT OF STATE,

Washington, March 23, 1907.

3. Issuance of Passports as Affected by the Executive Order of April 6, 1907—Emergency Passports.

The following circular instruction relative to the issuance of passports, dated April 19, 1907, has been sent by the Department of State to all American diplomatic and consular officers:

*To the Diplomatic and Consular Officers
of the United States.*

GENTLEMEN: Paragraphs 150, 151, 152, and 163 of the Diplomatic Instructions and Consular Regulations as amended by the Executive order* of April 6, 1907, read as follows:

"150. When Passports May Be Issued.—Passports can not be issued by diplomatic or consular officers if the applicant has time to apply to the Department of State and await its reply. Where inconvenience or hardship would result to a person entitled to receive a passport unless he received it at once, a diplomatic officer, or a consular officer who shall have received authority to do so from the Secretary of State, may issue to such person an emergency passport, good for a period not to exceed six months from the date of issuance, and to be used for a purpose which shall be stated in the passport.

"This paragraph shall become effective July 1, 1907."

"151. Applications.—Persons entitled to receive passports who desire to secure them when they are abroad may make applications therefor to the Department of State through a diplomatic or consular officer. Native citizens thus applying must make an affidavit with respect to birth, take the oath of allegiance, and furnish identification by a creditable person, all in duplicate and according to Form No.—. Naturalized citizens must comply with the same requirements, using Form No.—; and, if claiming citizenship through naturalization of husband or parent, using Form No.—. A naturalized citizen must also exhibit his certificate of naturalization or that of the husband or parent through whom citizenship is claimed, or a duly certified copy of the court record thereof. Further evidence of the applicant's citizenship may be required, if deemed necessary. A loyal resident of an insular possession of the United States in addition to the information now required in the case of a citizen of the United States must state that he owes allegiance to the United States and does not acknowledge allegiance to any other government, and

* For the text of this order, see Appendix.

must submit an affidavit from at least two credible witnesses having good means of knowledge in substantiation of his statements of birth, residence and loyalty. The identity of an applicant for a passport should always be established when the application is taken.

"This paragraph shall become effective July 1, 1907."

"152. Expiration of Passports.—A passport issued by the Department is good for a period of two years, when it expires; but it may be renewed for a further period of two years by a diplomatic officer or by a consular officer who has received authority for the purpose from the Secretary of State. It is permissible to renew passports only once.

"This paragraph shall become effective July 1, 1907."

"163. Return of Passports.—As soon as an emergency passport is issued by a diplomatic or consular officer he shall transmit to the Department of State a duplicate of the application and a statement of the proof accepted by him for the issuance of the passport and of the reason why the issuance of the passport was necessary. Whenever an application for a passport is made to the Department of State through a diplomatic or consular officer he shall transmit a duplicate of the application and of the accompanying proof of the right to receive a passport to the Department of State, but he need not, unless otherwise instructed, transmit a certificate of naturalization.

"This paragraph shall become effective July 1, 1907."

Consuls at the following places shall have the right to issue emergency passports:

Adis Ababa, Abyssinia.

Barbados.

Calcutta.

Colombo, Ceylon.

Curacao, W. I.

Nassau, N. P.

St. Michael's, Azores.

Seoul, Korea.

Sierra Leone.

Singapore.

Tahiti.

Tamatave.

A consul in a country where there is diplomatic representation of the United States may issue emergency passports during the temporary absence of the diplomatic representative.

Emergency passports may be issued only when it is clearly shown that the person applying for the passport is about to proceed to a country to obtain admission into which a passport is obligatory. They may be issued for use with the local authorities only in case such authorities will not accept as evidence of a right to recognition as an American citizen the certificate of registration provided for in paragraph 172 of the consular regulations as prescribed in the executive order of April 8, 1907. Emergency passports shall be in the form now used for regular passports, except that there shall be inserted therein the following statement:

Emergency Passport.—This passport is issued to....., in order that he may proceed to..... (If the passport is issued for other purposes than travel, the fact should be stated).

Diplomatic officers and all consular officers may take applications for the issuance of passports to American citizens by this Department, following the rules now in force on the subject of the issuance of passports, and shall forward each application to the Department with the evidence of the right to secure the passport. In the case of an application by a naturalized citizen who presents his certificate of naturalization, this document need not be forwarded to this Department, being the property of the applicant; but the application should set forth the name of the court in which the applicant was naturalized and the date and place of such naturalization.

Diplomatic and principal consular officers are authorized to extend for a period of two years passports issued by this Department which are about to expire and presented to them for extension. Such extension should be made by marking conspicuously across the passport the following words:

“Extended under the authority of the Secretary of State for two years and not valid after (date of expiration),” this being signed and dated by the diplomatic or consular officer and his seal affixed. A passport which has been thus extended is not valid after the

date to which it was extended. A passport which has expired can not be extended, and no passport can be extended more than once. Emergency passports can not be extended.

Immediately upon thus extending a passport the diplomatic or consular officer should notify the Department of the name of the holder of the passport, its number and date, and the reason why the extension was asked.

I am, gentlemen, your obedient servant,

ELIHU ROOT.

D. Forms.

The blank forms of applications for passports by native and naturalized citizens of the United States are subjoined:

[FORM FOR NATIVE CITIZEN.]

No.....

Issued.....

UNITED STATES OF AMERICA.

STATE OF }
COUNTY OF } ss.

I,, a native and loyal citizen of the United States, hereby apply to the Department of State, at Washington, for a passport for myself, accompanied by as follows:, born at, on the day of, 18....., and

I solemnly swear that I was born at, in the State of, on or about the day of, 18.....; that my father is a citizen of the United States; that I am domiciled in the United States, my permanent residence being at, in the State of, where I follow the occupation of; that I am about to go abroad temporarily, and that I intend to return to the United States, with the purpose of residing and performing the duties of citizenship therein.

OATH OF ALLEGIANCE.

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith

and allegiance to the same, and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.

Sworn to before me this day of, 19.....

.....,
Notary Public.

DESCRIPTION OF APPLICANT.

Age, years.	Mouth,
Stature, feet,	Chin,
..... inches, Eng.	Hair,
Forehead,	Complexion,
Eyes,	Face,
Nose,	

IDENTIFICATION.

....., 19.....
 I hereby certify that I know the above-named personally, and know him to be a native-born citizen of the United States, and that the facts stated in his affidavit are true to the best of my knowledge and belief.

[Address of witness.]

Applicant desires passport sent to following address:

.....,

[FORM FOR NATURALIZED CITIZEN.]

No..... Issued.....

UNITED STATES OF AMERICA.

STATE OF }
 COUNTY OF } ss:

I,, a naturalized and loyal citizen of the United States, hereby apply to the Department of State, at Washington, for a passport for myself, accompanied by..... as follows:, born at, on the day of, 18.....; and

I solemnly swear that I was born at....., on or about the..... day of....., 18.....; that I emigrated to

the United States, sailing on board the, from, on or about the day of, 18.....; that I resided years, uninterruptedly, in the United States, from to, at; that I was naturalized as a citizen of the United States before the court of, at, on the day of, 19....., as shown by the accompanying certificate of naturalization; that I am the identical person described in said certificate; that I am domiciled in the United States, my permanent residence being at, in the State of, where I follow the occupation of; that I am about to go abroad temporarily and that I intend to return to the United States, with the purpose of residing and performing the duties of citizenship therein.

OATH OF ALLEGIANCE.

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion: So help me God.

Sworn to before me this day of, 19.....

.....,
Notary Public.

DESCRIPTION OF APPLICANT.

Age, years.	Mouth,
Stature, feet,	Chin,
..... inches, Eng.	Hair,
Forehead,	Complexion,
Eyes,	Face,
Nose,	

IDENTIFICATION.

I hereby certify that I know the above-named personally, and know h..... to be the identical person referred to in the within-described certificate of naturalization, and that the facts stated in h..... affidavit are true to the best of my knowledge and belief.

[Address of witness.]

.....,

Applicant desires passport sent to following address :

.....,

Passports issued by the Secretary of State are in the following form :

[SEAL.]

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I, the undersigned, Secretary of State of the United States of America, hereby request all whom it may concern to permit, a citizen of the United States, safely and freely to pass, and in case of need to give all lawful aid and protection.

DESCRIPTION.

Age, years ; stature feet inches,
 Eng.; forehead; eyes; nose; mouth
; chin; hair; complexion; face
 [Signature of the bearer,]

Given under my hand and seal of the Department of State, at the city of Washington, the day of, in the year 190..., and of the independence of the United States the one hundred and twenty-eighth.

No

CHAPTER VII.

ATTITUDE OF FOREIGN GOVERNMENTS TOWARD THEIR
CITIZENS WHO HAVE BECOME NATURALIZED IN UNITED
STATES.

Information relative to rules and regulations of foreign countries,
compiled by Department of State.

Austria-Hungary.

Belgium.

Denmark.

France.

Germany.

Greece.

Italy.

The Netherlands.

Norway.

Persia.

Portugal.

Roumania.

Russia.

Servia.

Sweden.

Switzerland.

Turkey.

Information Relative to Rules and Regulations of Foreign
Countries, Compiled by Department of State.*

The following information relative to the laws and regulations of various foreign countries has been carefully compiled by the Department of State, and is furnished to American citizens, formerly subjects of those countries, who contemplate returning to the country of their origin:

Austria-Hungary.

All male subjects of Austria-Hungary are liable to the performance of military service between the ages of nineteen and forty-two years.

Under the terms of the treaty between the United

*The information given is believed to be correct, yet it is not to be considered as official, as it relates to the laws and regulations of foreign countries. Note by Department of State.

States and Austria-Hungary a former subject of that country, now a naturalized citizen of the United States, is treated, upon his return, as a citizen of the United States. If he violated any of the criminal laws of Austria-Hungary before the date of emigration he remains liable to trial and punishment, unless the right to punish has been lost by lapse of time as provided by law. A naturalized American citizen, formerly a subject of Austria-Hungary, may be arrested and punished under the military laws only in the following cases: (1) If he was accepted and enrolled as a recruit in the army before the date of emigration, although he had not been put in service; (2) if he was a soldier when he emigrated, either in active service or on leave of absence; (3) if he was summoned by notice, or by proclamation, before his emigration, to serve in the reserve or militia, and failed to obey the call; (4) if he emigrated after war had broken out.

A naturalized American citizen of Austro-Hungarian origin on arriving in that country should at once show his passport to the proper authorities; and if, on inquiry, it is found that his name is on the military rolls, he should request that it be struck off, calling attention to the treaty of September 20, 1870 (17 Stat. at L. 833), between this country and Austria-Hungary.

The laws of Austria-Hungary require every stranger to produce a passport on entering. This provision is not usually enforced, but may be at any time. Travelers are usually called upon to establish their identity, and are advised to provide themselves with passports. They do not ordinarily require to be visaed.

Belgium.

Every male Belgian must register during the calendar year in which he reaches the age of nineteen years to take part in the drawing of lots for the raising of the necessary military contingent.

Anyone who has drawn a number which designates him for military service, or, in case of his absence, has had a number drawn for him by the proper authority, is punishable if he does not answer the call for service.

Under the terms of the convention between the United States and Belgium, a Belgian, naturalized as a citizen of the United States, is considered by Belgium as a citizen of the United States, but upon return to Belgium he may be prosecuted for crime or misdemeanor committed before naturalization, saving such limitations as are established by the laws of Belgium.

A naturalized American, formerly a Belgian, who has resided five years in this country, can not be held to military service in Belgium, or to incidental obligation resulting therefrom, in the event of his return, except in cases of desertion from organized or embodied military or naval service.

Passports are not usually required in Belgium, but people who contemplate sojourning in that country are recommended to carry them in order to establish their identity. They do not require to be visaed or indorsed.

Denmark.

Military service becomes compulsory to a subject of Denmark during the calendar year in which he reaches the age of twenty-two years.

In November or December of the year in which he becomes seventeen years old, he is expected to report for enrollment on the conscription lists. If he neglects to do so, he may be fined from 2 to 40 kroner; but if his neglect arises from a design to evade service he may be imprisoned.

In case he fails to appear when the law requires that he be assigned to military duty, he is liable to imprisonment.

When one whose name has been, or should have been,

entered on the conscription lists emigrates without reporting his intended departure to the local authorities he is liable to a fine of from 25 to 100 kroner.

A person above the age of twenty-two years, entered for military service, must obtain a permit from the minister of justice to emigrate. Noncompliance with this regulation is punishable by a fine of from 20 to 200 kroner.

The treaty of naturalization between the United States and Denmark provides that a former subject of Denmark, naturalized in the United States, shall, upon his return to Denmark, be treated as a citizen of the United States; but he is not thereby exempted from penalties for offenses committed against Danish law before his emigration. If he renews his residence in Denmark with intent to remain, he is held to have renounced his American citizenship.

A naturalized American, formerly a Danish subject, is not liable to perform military service on his return to Denmark, unless at the time of emigration he was in the army and deserted, or, being twenty-two years old at least, had been enrolled for duty and notified to report, and failed to do so. He is not liable for service which he was not actually called upon to perform.

Passports are not required to secure admission to Denmark, but they are useful or necessary as means of identification, or in proof of citizenship. They should be exhibited whenever evidence of citizenship is required.

France.

All Frenchmen who are not declared unfit or excused may be called upon for military duty between the ages of 20 and 45 years. They are obliged to serve three years in the active army, ten in the reserve of the active army, six in the territorial army, and six in the reserve of the territorial army.

If released from all military obligations in France, or if the authorization of the French government was obtained beforehand, naturalization of a former French citizen in the United States is accepted by the French government; but a Frenchman naturalized abroad without the consent of his government, and who at the time of his naturalization was still subject to military service in the active army, or in the reserve of the active army, is held to be amenable to the French military laws. Not having responded to the notice calling him to accomplish his military service, he is placed on the list of those charged with noncompliance with the military laws, and, if he returns to France, he is liable to arrest, trial, and, upon conviction, is turned over to the army, active, reserve, or territorial, according to his age. Long absence from France and old age do not prevent this action.

A Frenchman naturalized abroad, after having passed the age of service in the active army and the reserve, nevertheless continues on the military list until he has had his name struck from the rolls, which may usually be done by his sending his naturalization certificate through the United States embassy to the proper French authorities.

The French government rarely gives consent to a Frenchman of military age to throw off his allegiance. Application on the subject may, however, be addressed to the minister of justice at Paris, accompanied by a full statement of the particulars and a fee of 675 francs. If the request is granted the name of the person concerned is erased from the military list, and he may return to France safely.

There is no treaty between the United States and France defining the status of former French citizens who have become naturalized American citizens.

Passports are not necessary to enter France, but are

usually required from sojourners or travelers afterwards. They are recognized without being visaed or indorsed.

Germany.

A German subject is liable to military service from the time he has completed the seventeenth year of his age until his forty-fifth year, active service lasting from the beginning of his twentieth year to the end of his thirty-sixth year.

A German who emigrates before he is seventeen years old, or before he has been actually called upon to appear before the military authorities, may after a residence in the United States of five years and after due naturalization, return to Germany on a visit, but his right to remain in his former home is denied by Germany, and he may be expelled after a brief sojourn on the ground that he left Germany merely to evade military service. It is not safe for a person who has been once expelled to return to Germany without having obtained permission to do so in advance. A person who has completed his military service and has reached his thirty-first year and become an American citizen may safely return to Germany.

The treaties between the United States and the German states provide that German subjects who have become citizens of the United States shall be recognized as such upon their return to Germany if they resided in the United States five years.

But a naturalized American of German birth is liable to trial and punishment upon return to Germany for an offense against German law committed before emigration, saving always the limitations of the laws of Germany. If he emigrated after he was enrolled as a recruit in the standing army; if he emigrated while in service or while on leave of absence for a limited time; if, having an unlimited leave or being in the reserve, he emigrated

after receiving a call into service or after a public proclamation requiring his appearance, or after war broke out—he is liable to trial and punishment on return.

Alsace-Lorraine having become a part of Germany since our naturalization treaties with the other German states were negotiated, American citizens, natives of that province, under existing circumstances, may be subjected to inconvenience, and possible detention, by the German authorities if they return without having sought and obtained permission to do so from the imperial governor at Strasburg.

The authorities of Württemberg require that the evidence of the American citizenship of a former subject of Württemberg, which is furnished by a passport, shall be supplemented by a duly authenticated certificate showing five years' residence in the United States, in order that fulfilment of the treaty condition of five years' residence may appear separately as a fact of record.

A former German subject against whom there is an outstanding sentence, or who fears molestation upon return for an offense against German law, may petition the sovereign of his native state for relief, but this government can not act as intermediary in presenting the petition.

Travelers are not required to show passports on entering or leaving Germany, but they are likely to be called upon to establish their identity and citizenship at any time, and especially so if living in boarding houses or renting apartments. They are consequently recommended to provide themselves with passports. They do not usually require to be visaed or indorsed, but the local authorities sometimes demand a German translation.

Greece.

The Greek government does not, as a general statement, recognize a change of nationality on the part of a former Greek without the consent of the King, and a

former Greek who has not completed his military service, and who is not exempt therefrom under the military code, may be arrested on his return to Greece. The practice of the Greek government is not, however, uniform, but American citizens of Greek origin are advised to find out before returning what status they may expect to enjoy. Information should be sought directly from the Greek government, and this Department always refuses to act as intermediary in seeking the information.

There is no treaty on the subject of naturalized citizens between the United States and Greece.

Passports are not required in Greece, but may be useful in establishing American citizenship.

Italy.

Italian subjects, between the ages of twenty and thirty-nine years are liable for the performance of military duty under Italian law, except in the case of an only son; or where two brothers are so nearly of the same age that both would be serving at the same time, in which event only one is drafted; or where there are two sons of a widow, when only one is taken.

Naturalization of an Italian subject in a foreign country without consent of the Italian government is no bar to liability to military service.

A former Italian subject may visit Italy without fear of molestation when he is under the age of twenty years; but between the ages of twenty and thirty-nine he is liable to arrest and forced military service, if he has not previously reported for such service. After the age of thirty-nine he may be arrested and imprisoned (but will not be compelled to do military duty) unless he has been pardoned. He may petition the Italian government for pardon, but this Department will not act as the intermediary in presenting his petition.

There is no treaty between the United States and Italy

defining the status of former Italian subjects who have become American citizens.

The Italian law does not require the production of passports by foreign travelers, but they are frequently called upon to establish their identity, and are accordingly recommended to provide themselves with passports. They are often useful in preventing an interference with departure from Italy. They do not require to be visaed or indorsed.

The Netherlands.

A subject of the Netherlands is liable to military service from his nineteenth to his fortieth year. He must register to take part in the drawing of lots for military service between January 1 and August 31 of the calendar year in which he reaches the age of nineteen. He is exempt, however, from service if he is an only son or is physically disabled; and in the case of a family half of the brothers are exempt, or the majority if the number is uneven.

No military service is required of one who became a citizen of the United States before the calendar year in which he became nineteen years of age, and a Netherlands subject who becomes a citizen of the United States when he is nineteen and between January 1 and August 31 may have his name removed from the register by applying to the Queen's commissioner of the province in which he was registered. If he does not have his name removed from the register, or if he becomes a citizen of the United States after the register is closed (August 31), and his name is drawn for enlistment, his naturalization does not affect his military obligations to the Netherlands, and if he returns he is liable (1) to be treated as a deserter, if he did not respond to the summons for service, or (2) to be enlisted if he is under forty.

Former Netherlands subjects are advised to ascertain by inquiry from the Netherlands authorities what status they may expect to enjoy if they return to the Netherlands. This Department, however, uniformly declines to act as the intermediary in the inquiry.

Passports are not required for admission to the Netherlands, but American citizens are advised to carry them for purposes of identification and in attestation of citizenship.

Norway.

Subjects of Norway are liable to performance of military duty in and after the calendar year in which they reach their twenty-second year.

Under the treaty between the United States and Sweden and Norway, a naturalized citizen of the United States, formerly a subject of Norway, is recognized as an American citizen upon his return to the country of his origin. He is liable, however, to punishment for an offense against the laws of Norway committed before his emigration, saving, always, the limitations and remissions established by those laws. Emigration itself is not an offense, but nonfulfilment of military duty and desertion from a military force or ship are offenses.

A naturalized American who performed his military service or emigrated when he was not liable to it, and who infringed no laws before emigrating, may safely return to Norway.

He must, however, report to the conscription officers, and, on receiving a summons, present himself at the meetings of the conscripts in order to prove his American citizenship.

If he has remained as long as two years in Norway, he is obliged, without being summoned, to present himself for enrollment at the first session, since he is then deemed

by Norway to have renounced his American citizenship.

If he renews his residence in the kingdom without intent to return to America, he is held to have renounced his American citizenship.

Passports are not required from persons entering or traveling in the kingdom, but they may be called upon to establish their citizenship, and are consequently advised to procure passports.

Persia.

Permission to be naturalized in a foreign country is not granted by the Persian government to a Persian subject if he is under charge for a crime committed in Persia, or is a fugitive from justice, or a deserter from the Persian army, or is in debt in Persia, or fled to avoid pecuniary obligations.

If a Persian subject becomes a citizen of another country with the permission of the Persian government he is forbidden to re-enter Persian territory, and if he had any property in Persia he is ordered to sell or dispose of it.

There is no treaty between the United States and Persia defining the status of former Persian subjects who have become naturalized American citizens.

Passports are usually required of foreigners desiring to enter Persia, and they should, if possible, bear the visa or indorsement of a Persian consular officer.

Portugal.

Military service is obligatory upon Portuguese male subjects, but by becoming naturalized in a foreign country a Portuguese loses his qualifications as such.

On returning to the kingdom with the intention of residing in it he may reacquire Portuguese subjection by requesting it from the municipal authorities of the place

he selects for his residence. Not making this declaration, he remains an alien, and is not subject to military duty.

If a Portuguese leaves Portugal without having performed the military duty to which he was liable, and becomes naturalized in a foreign country, his property is subject to seizure, and that of the person who may have become security for him when he left the kingdom is equally liable. There is no treaty between the United States and Portugal defining the status of former Portuguese subjects who have become naturalized American citizens.

Passports are not required to enter Portuguese dominions. Travelers are, however, required to establish their nationality when they depart, and for this purpose a passport is the most effective document.

[Note by the author: The rules as above stated for Portugal need some amplification. If a Portuguese subject leaves Portugal after becoming liable to military duty and becomes naturalized in this country, he is liable to arrest upon his return to Portugal. The Department of State has recognized this principle in its treaties and diplomatic correspondence with many foreign governments. But Portugal has taken a more extreme attitude. In a case recently occurring in Madeira, the Portuguese authorities arrested and imprisoned a naturalized American citizen of Portuguese origin, although it appeared that the man had left Portugal and had been domiciled in the United States for five years at the time he was summoned to report for military duty, but had not yet become a naturalized citizen. The Portuguese government held that inasmuch as he was drafted prior to his naturalization, he was a deserter under their law and subject to punishment. His absence from the territorial jurisdiction of Portugal at the time of his summons appeared to be immaterial. This attitude has been made the subject of

protest by the Department of State. Mr. Bacon, Acting Secretary, to Mr. Bryan, minister to Portugal, March 30, 1907. MS. Inst. to Portugal.]

Roumania.

All male inhabitants of Roumania, except those under foreign protection, are liable to military duty between the ages of twenty-one and thirty years.

American citizens formerly Roumanian subjects are not molested upon their return to Roumania, unless they infringed Roumanian law before emigrating. One who did not complete his military service in Roumania, and can not prove that he performed military service in the United States, is subject to arrest, or fine, or both, for evasion of military duty.

There is no treaty between the United States and Roumania defining the status of naturalized Americans of Roumanian birth returning to Roumania.

Passports are absolutely necessary in Roumania, and must be visaed by a Roumanian consul. If they are not so visaed the holder may be sent back from the frontier to the nearest place where there is a Roumanian consul.

An American who intends to remain in Roumania for a longer period than eight days must have his passport visaed by the United States consul at Bucharest, and obtain a permit of residence, valid for one year, from the prefecture of police.

Russia.

A Russian is enrolled for military service at the beginning of the twenty-first year of his age, and remains on the rolls to the end of his forty-third year; but at the age of fifteen he is considered to be among those who are liable to perform military service, and he can not, after reaching that age, ask for permission to become a citizen of a foreign country, unless he has performed his

military service. A Russian who becomes a citizen of another country without imperial consent is liable, under Russian law, to the loss of all his civil rights, and to perpetual banishment from the Empire. If he returns he is liable to deportation to Siberia. When a Russian emigrates before he is fifteen years old, and subsequently becomes a citizen of another country, he is equally liable to punishment, unless when he attained the age of twenty-one years he took steps necessary to obtain the consent of the Emperor to his expatriation.

Naturalized Americans of Russian birth, of the Jewish race, are not allowed to enter Russia except by special permission. For this, they may apply to the Minister of the Interior, but the Department can not act as intermediary in making the application.

There is no treaty between the United States and Russia defining the status of American citizens of Russian birth upon their return to Russia.

No one is admitted to Russia without a passport. It must be visaed by a Russian diplomatic or consular representative. Upon entering Russia it should be shown at the first government house, and the holder will be given another passport or permit of sojourn. At least twenty-four hours before departure from Russia this permit should be presented and a passport of departure will be granted and the original passport returned. A fresh permit to remain in Russia must be obtained every six months.

Servia.

Ordinarily, all subjects of Servia are expected to perform at least two years military service after they attain manhood.

If a subject of Servia emigrates before he has fulfilled his military obligations, the Servian government does not recognize a change of nationality made without the

consent of the King, and upon his return he may be subject to molestation.

If, however, he performed his military service before emigration, his acquisition of naturalization in the United States is recognized by the Servian government.

There is no treaty between the United States and Servia defining the status of naturalized Americans of Servian birth returning to Servia.

Passports are rigorously required of all persons who desire to enter Servia.

Sweden.

Subjects of Sweden are liable to performance of military duty in and after the calendar year in which they reach their twenty-first year.

Under the treaty between the United States and Sweden and Norway [17 Stat. at L. 809], a naturalized citizen of the United States, formerly a subject of Sweden, is recognized as an American citizen upon his return to the country of his origin. He is liable, however, to punishment for an offense against the laws of Sweden committed before his emigration, saving, always, the limitations and remissions established by those laws. Emigration itself is not an offense, but nonfulfilment of military duty, and desertion from a military force or ship, are offenses.

A naturalized American who performed his military service or emigrated when he was not liable to it, and who infringed no laws before emigrating, may safely return to Sweden.

If he renews his residence in the kingdom without intent to return to America, he is held to have renounced his American citizenship, and he will be liable to perform military duty.

Passports are not required from persons entering or traveling in the kingdom, but they may be called upon

to establish their citizenship, and are consequently advised to procure passports.

Switzerland.

Every Swiss citizen is liable, under Swiss law, to military service from the beginning of the year in which he becomes twenty years of age until the end of the year when he becomes forty-four. Every Swiss of military age who does not perform military service is subject to an annual tax, whether he resides in the Confederation or not, or to punishment for nonpayment of the tax if he returns to Switzerland.

If a Swiss citizen renounces Swiss allegiance in the manner prescribed by the Swiss law of July 3, 1876, and his renunciation is accepted, his naturalization in another country is recognized, but without such acceptance it is not recognized, and is held to descend from generation to generation.

Before he returns to Switzerland an American citizen of Swiss origin should file with the cantonal authorities his written declaration of renunciation of his rights to communal, cantonal, and in general Swiss citizenship, with documents showing that he has obtained foreign citizenship for himself, wife, and minor children, and received the sealed document of release from Swiss citizenship through the direction of justice of the canton of his origin. If he neglects this, and is within the ages when military service may be required, he is liable to military tax, or to arrest and punishment in case of nonpayment of the tax.

There is no treaty between the United States and Switzerland defining the status of former Swiss citizens who have become naturalized as American citizens.

Passports are not required for admission to Switzerland, but are usually demanded from persons sojourning

in that country. They do not require to be visaed or indorsed to be valid.

Turkey.

The Turkish government denies the right of a subject of Turkey to become a citizen of any other country without the authority of the Turkish government. His naturalization is, therefore, regarded by Turkey as void with reference to himself and his children, and he is forbidden to return to Turkey.

The consent of the Turkish government to the naturalization in another country of a former subject of Turkey is given only upon condition that the applicant shall stipulate, either never to return, or, returning, to regard himself as a Turkish subject. Therefore, if a naturalized American citizen, formerly a subject of Turkey, returns to Turkey, he may expect arrest and imprisonment, or expulsion.

Jews are prohibited from colonizing in Turkish dominions.

There is no treaty between the United States and Turkey defining the status of naturalized Americans, formerly Turkish subjects, who return to Turkey.

Passports are required from all persons entering Turkish dominions (Egypt excepted), and persons who enter without passports are liable to fine or imprisonment. The passports should, if possible, be visaed by a Turkish consular officer in the United States.

APPENDIX.

Laws of the United States relating to Naturalization and
Expatriation.

Naturalization Treaties to which the United States is a
Party.

Executive Orders of April 6 and April 8, 1907, Amend-
ing the Instructions to Diplomatic Officers and the
Consular Regulations, Relative to Expatriation,
Citizenship, Naturalization, and Passports.

Naturalization Regulations Promulgated by the Depart-
ment of Commerce and Labor.

List of Courts Authorized to Naturalize Aliens.

List of Foreign Countries and their Rulers.

APPENDIX.

LAWS OF THE UNITED STATES RELATING TO
NATURALIZATION AND EXPATRIATION.*Sections of Revised Statutes :*

- Sec. 1994. Citizenship of alien woman married to a citizen of the United States.
- Sec. 1995. Citizenship of persons born in Territory of Oregon.
- Sec. 1996. Deserters.
- Sec. 1997. Deserters.
- Sec. 1998. Deserters.
- Sec. 1999. Right of expatriation.
- Sec. 2000. Protection of naturalized citizens of the United States.
- Sec. 2001. Assistance to citizens of the United States unjustly deprived of liberty in foreign country.
- Sec. 2166. Naturalization of soldiers.
- Sec. 2169. Who may be naturalized.
- Sec. 2171. Alien enemies.
- Sec. 2172. Naturalization by naturalization of parent.
- Sec. 2174. Naturalization of merchant seamen.
- Sec. 5395. False swearing in naturalization.
- Sec. 5424. False personation, etc.
- Sec. 5425. Using false certificate of citizenship.
- Sec. 5426. Using false certificate, etc., as evidence of right to vote.
- Sec. 5427. Aiding or abetting violation of preceding sections.
- Sec. 5428. Falsely claiming citizenship.
- Sec. 5429. Provisions applicable to all courts of naturalization.

Other Acts of Congress :

- Act of May 6, 1882 (22 Stat. at L.), forbidding naturalization of Chinese.
- Act of June 29, 1906 (34 Stat. at L.), establishing a Bureau of Naturalization, and providing for a uniform rule for the naturalization of aliens.
- Act of March 2, 1907, in reference to the expatriation of citizens and their protection abroad.

SECTIONS OF THE REVISED STATUTES.

Sec. 1994. Any woman who is now or may hereafter be married to a citizen of the United States, and who

might herself be lawfully naturalized, shall be deemed a citizen.

Sec. 1995. All persons born in the district of country formerly known as the Territory of Oregon, and subject to the jurisdiction of the United States on the 18th May, 1872, are citizens in the same manner as if born elsewhere in the United States.

Sec. 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

Sec. 1997. No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Sec. 1998. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six.

Sec. 1999. Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

Sec. 2000. All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of persons and property which is accorded to native-born citizens.

Sec. 2001. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

Sec. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

Sec. 2169. The provisions of this title shall apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent.

Sec. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Sec. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the Territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or

construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of ^{or} such alien.

Sec. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed.

Sec. 2174 [U. S. Comp. Stat. 1901, 1334]. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in

any Act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

Sec. 5395. In all cases where any oath or affidavit is made or taken under or by virtue of any law relating to the naturalization of aliens, or in any proceedings under such laws, any person taking or making such oath or affidavit who knowingly swears falsely, shall be punished by imprisonment not more than five years, nor less than one year, and by a fine of not more than one thousand dollars.

Sec. 5424. Every person applying to be admitted a citizen, or appearing as a witness for any such person, who knowingly personates any other person than himself, or falsely appears in the name of a deceased person, or in an assumed or fictitious name, or falsely makes, forges, or counterfeits any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or who utters, sells, disposes of, or uses as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or sells or disposes of to any person other than the person for whom it was originally issued any certificate of citizenship, or certificate showing any person to be admitted a citizen, shall be punished by imprisonment at hard labor not less than one year, nor more than five years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.

Sec. 5425. Every person who uses, or attempts to use, or aids, or assists, or participates in the use of any certificate of citizenship, knowing the same to be forged, or

counterfeit, or ante-dated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or who, without lawful excuse, knowingly is possessed of any false, forged, ante-dated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeit, with intent unlawfully to use the same; or obtains, accepts, or receives any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; and every person who has been or may be admitted to be a citizen who, on oath or by affidavit, knowingly denies that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, shall be imprisoned at hard labor not less than one year nor more than five years, or be fined not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed.

Sec. 5426. Every person who in any manner uses for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment, or exemplification has been unlawfully issued or made; and every person who unlawfully uses, or attempts to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be punished by imprisonment at hard labor not less than one year nor more than five

years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.

Sec. 5427. Every person who knowingly and intentionally aids or abets any person in the commission of any felony denounced in the three preceding sections, or attempts to do any act therein made felony, or counsels, advises, or procures, or attempts to procure, the commission thereof, shall be punished in the same manner and to the same extent as the principal party.

Sec. 5428. Every person who knowingly uses any certificate of naturalization heretofore granted by any court or hereafter granted, which has been or may be procured through fraud or by false evidence, or has been or may be issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and every person who falsely represents himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be punishable by a fine of not more than one thousand dollars, or be imprisoned not more than two years, or both.

Sec. 5429. The provisions of the five preceding sections shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced.

Later Acts of Congress.

Act of May 6, 1882, 22 Stat. at L. 61. Hereafter no state court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

Act of June 29, 1906 (34 Stat. at L. 596), Establishing a Bureau of Naturalization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the designation of the Bureau of Immigration in the Department of Commerce and Labor is hereby changed to the "Bureau of Immigration and Naturalization," which said Bureau, under the direction and control of the Secretary of Commerce and Labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the said Bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

Sec. 2. That the Secretary of Commerce and Labor shall provide the said Bureau with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this Act upon such Bureau, fixing the compensation of such additional employees until July first, nineteen hundred and seven, within the appropriations made for that purpose.

Sec. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the Supreme Court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified, State, Territorial, and Federal, shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Immigration and Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said Bureau.

Sec. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty,

and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however,* That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided,* That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons

teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United

States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or

order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaration of intention.

Sec. 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned.

Sec. 6. That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such

alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

Sec. 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

Sec. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

Sec. 9. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and

entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

Sec. 10. That in case the petitioner has not resided in the State, Territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the state, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside.

Sec. 11. That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

Sec. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this Act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essen-

tial facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said Bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Immigration and Naturalization, and shall account for the same to the said Bureau whenever required so to do by such Bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said Bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said Bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

Sec. 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge,

collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Immigration and Naturalization, and paid over to such Bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Commerce and Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpoenaing and paying the legal fees of any witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the

petitioner: *Provided*, That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to such Bureau as in case of other fees to which the United States may be entitled under the provisions of this Act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this Act upon the clerks of courts from fees received by such clerks in naturalization proceedings. And in case the clerk of any court collects fees in excess of the sum of six thousand dollars in any one year, the Secretary of Commerce and Labor may allow to such clerk from the money which the United States shall receive additional compensation for the employment of additional clerical assistance, but for no other purpose, if in the opinion of the said Secretary the business of such clerk warrants such allowance.

Sec. 14. That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

Sec. 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen

may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered *prima facie* evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set

aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

Sec. 16. That every person who falsely makes, forges, counterfeits, or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person convicted of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment.

Sec. 17. That every person who engraves or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship, or who sells any such

plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor, or other proper officer, and any person who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use such plate or suffer the same to be used in forging or counterfeiting any such certificate or any part thereof; and every person who prints, photographs, or in any other manner causes to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof, or who sells any such certificate, or brings the same into the United States from any foreign place, except by direction of some proper officer of the United States, or who has in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent to unlawfully use the same, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such fine and imprisonment.

Sec. 18. That it is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this Act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

Sec. 19. That every person who without lawful excuse is possessed of any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization, with intent unlawfully to use the same, shall be im-

prisoned at hard labor not more than five years or be fined not more than one thousand dollars.

Sec. 20. That any clerk or other officer of a court having power under this Act to naturalize aliens, who wilfully neglects to render true accounts of moneys received by him for naturalization proceedings or who wilfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

Sec. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, or* to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

Sec. 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this Act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this Act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was

*Error in original Act. The word "or" should be omitted.—AUTHOR.

not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

Sec. 23. That any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Sec. 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

Sec. 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization laws shall remain in full force and effect.

Sec. 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and

seventy-three, of the Revised Statutes of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed.

Sec. 27. That substantially the following forms shall be used in the proceedings to which they relate:

DECLARATION OF INTENTION.

(Invalid for all purposes seven years after the date hereof.)

....., ss:

I,, aged years, occupation, do declare on oath (affirm) that my personal description is: Color, complexion, height, weight, color of hair, color of eyes, other visible distinctive marks.....; I was born in on the day of, anno Domini; I now reside at; I emigrated to the United States of America from on the vessel; my last foreign residence was It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to, of which I am now a citizen (subject); I arrived at the (port) of, in the State (Territory or District) of on or about the day of anno Domini; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant).....

Subscribed and sworn to (affirmed) before me this..... day of, anno Domini.....

[L. s.]

(Official character of attestor.)

PETITION FOR NATURALIZATION.

..... Court of

In the matter of the petition of to be admitted as a citizen of the United States of America.

To the Court:

The petition of respectfully shows:

First. My full name is

Second. My place of residence is number street, city of, State (Territory or District) of

Third. My occupation is

Fourth. I was born on the day of at

Fifth. I emigrated to the United States from, on or about the day of, anno Domini, and arrived at the port of, in the United States, on the vessel

Sixth. I declared my intention to become a citizen of the United States on the day of at, in the court of

Seventh. I am married. My wife's name is She was born in and now resides at I have children, and the name, date, and place of birth and place of residence of each of said children is as follows:;;

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to, of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least imme-

diately preceding the date of this petition, to wit, since , anno Domini , and in the State (Territory or District) of for one year at least next preceding the date of this petition, to wit, since day of , anno Domini

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the court of at....., and the said petition was denied by the said court for the following reasons and causes, to wit, , and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Commerce and Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated

(Signature of petitioner)

....., ss:

....., being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this day of , anno Domini

[L. S.]

.....
Clerk of the Court.

AFFIDAVIT OF WITNESSES.

..... Court of.....

In the matter of the petition of to be admitted a citizen of the United States of America.

....., ss:

....., occupation....., residing at....., and
....., occupation....., residing at....., each
being severally, duly, and respectively sworn, deposes and

says that he is a citizen of the United States of America; that he has personally known, the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the State (Territory or District) in which the above-entitled application is made for a period of years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

.....

Subscribed and sworn to before me this day of
, nineteen hundred and

[L. S.]

.....,
 (Official character of attester).

CERTIFICATE OF NATURALIZATION.

Number

Petition, volume, page

Stub, volume....., page

(Signature of holder)

Description of holder: Age,; height,; color,; complexion,; color of eyes,; color of hair,; visible distinguishing marks, Name, age, and place of residence of wife,,, Names, ages, and places of residence of minor children,,,;,;,;,

....., ss:

Be it remembered, that at a term of the court of, held at on the day of, in the year of our Lord nineteen hundred and,, who previous to his (her) naturalization was a citizen or subject of, at present residing at number street, city (town)

State (Territory or District), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that he was entitled to be so admitted, it was thereupon ordered by the said court that he be admitted as a citizen of the United States of America.

In testimony whereof, the seal of said court is hereunto affixed on the day of, in the year of our Lord nineteen hundred and, and of our independence the.....

[L. s.]

.....,
(Official character of attestor.)

STUB OF CERTIFICATE OF NATURALIZATION.

No. of certificate,

Name, ; age,

Declaration of intention, volume, page

Petition, volume, page

Name, age, and place of residence of wife,

....., Names, ages, and places of residence of
minor children,,,;,
.....;,;,

Date of order, volume, page

(Signature of holder)

Sec. 28. That the Secretary of Commerce and Labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this Act. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this Act shall be admitted in evidence equally with the originals in any and all proceedings under this Act and in all cases in which the originals thereof might be admissible as evidence.

Sec. 29. That for the purpose of carrying into effect the provisions of this Act there is hereby appropriated the sum of one hundred thousand dollars, out of any moneys in the Treasury of the United States not otherwise appropriated, which appropriation shall be in full for the objects hereby expressed until June thirtieth, nineteen hundred and seven; and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes of the United States shall not be applicable in any way to this appropriation.

Sec. 30. That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.

Sec. 31. That this Act shall take effect and be in force from and after ninety days from the date of its passage: *Provided*, That sections one, two, twenty-eight, and twenty-nine shall go into effect from and after the passage of this Act.

Act of March 2, 1907 (34 Stat. at L. 1228), in Reference to the Expatriation of Citizens and their Protection Abroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State shall be authorized,

in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law, and has resided in the United States for three years, a passport may be issued to him entitling him to the protection of the Government in any foreign country: *Provided*, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this Government in the country of which he was a citizen prior to making such declaration of intention.

Sec. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however*, That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also*, That no American citizen shall be allowed to expatriate himself when this country is at war.

Sec. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the

termination of the marital relation, by continuing to reside therein.

Sec. 4. That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation.

Sec. 5. That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, That such naturalization or resumption takes place during the minority of such child: *And provided further*, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

Sec. 6. That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority.

Sec. 7. That duplicates of any evidence, registration, or other acts required by this Act shall be filed with the Department of State for record.

NATURALIZATION CONVENTIONS TO WHICH THE UNITED STATES IS A PARTY.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE AUSTRO-HUNGARIAN MONARCHY [17 Stat. at L. 833].

Signed September 20, 1870; Ratified March 24, 1871; Ratifications Exchanged July 14, 1871; Proclaimed August 1, 1871.

ARTICLE I.

Citizens of the Austro-Hungarian Monarchy who have resided in the United States of America uninterruptedly at least five years, and during such residence have become naturalized citizens of the United States, shall be held by the government of Austria and Hungary to be American citizens, and shall be treated as such.

Reciprocally, citizens of the United States of America who have resided in the territories of the Austro-Hungarian Monarchy uninterruptedly at least five years, and during such residence have become naturalized citizens of the Austro-Hungarian Monarchy, shall be held by the United States to be citizens of the Austro-Hungarian Monarchy, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country committed before his emigration, saving always the limitation established by the laws of his original country and any other remission of liability to punishment.

In particular, a former citizen of the Austro-Hungarian Monarchy, who, under the first article, is to be held

as an American citizen, is liable to trial and punishment, according to the laws of Austro-Hungary, for non-fulfilment of military duty:

1st. If he has emigrated, after having been drafted at the time of conscription, and thus having become enrolled as a recruit for service in the standing army.

2d. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3d. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former citizen of the Austro-Hungarian Monarchy naturalized in the United States, who by or after his emigration has transgressed the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered one, two, and three, can, on his return to his original country, neither be held subsequently to military service nor remain liable to trial and punishment for the non-fulfilment of his military duty.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, concluded on the 3d July, 1856, [11 Stat. at L. 691], between the government of the United States of America, on the one part, and the Austro-Hungarian Monarchy, on the other part, as well as the additional convention, signed on the 8th May, 1848 [9 Stat. at L. 944], to the treaty of commerce and navigation concluded between the said governments on the 27th of August, 1829 [8 Stat. at L. 398], and especially the stipulations of Article IV of the said additional convention concerning the delivery of the deserters from

the ships of war and merchant vessels, remain in force without change.

ARTICLE IV.

The emigrant from the one state, who, according to Article I, is to be held as a citizen of the other state, shall not, on his return to his original country, be constrained to resume his former citizenship; yet if he shall of his own accord re-acquire it, and renounce the citizenship obtained by naturalization, such a renunciation is allowable, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President of the United States, by and with the consent of the Senate of the United States, and by his Majesty the Emperor of Austria, &c., King of Hungary, with the constitutional consent of the two legislatures of the Austro-Hungarian Monarchy, and the ratifications shall be exchanged at Vienna within twelve months from the date hereof.

In faith whereof the plenipotentiaries have signed this convention as well in German as in English, and have thereto affixed their seals.

Done at Vienna the twentieth day of September, in

the year of our Lord one thousand eight hundred and seventy, in the ninety-fifth year of the Independence of the United States of America, and in the twenty-second year of the reign of his imperial and royal Apostolic Majesty.

[SEAL.]

JOHN JAY.

[SEAL.]

BEUST.

TREATY BETWEEN THE UNITED STATES AND THE GRAND
DUCHY OF BADEN [16 Stat. at L. 731].

*Concluded July 19, 1868; Exchanged December 7,
1869; Proclaimed January 10, 1870.*

ARTICLE I.

Citizens of the Grand Duchy of Baden, who have resided uninterruptedly within the United States of America five years, and before, during, or after that time have become or shall become naturalized citizens of the United States, shall be held by Baden to be American citizens, and shall be treated as such. Reciprocally, citizens of the United States of America, who have resided uninterruptedly within the Grand Duchy of Baden five years, and before, during, or after that time have become or shall become naturalized citizens of the Grand Duchy of Baden, shall be held by the United States to be citizens of Baden, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitation established by the laws of his original country, or any other remission of

liability to punishment. In particular, a former Badener who, under the first article, is to be held as an American citizen, is liable to trial and punishment according to the laws of Baden for non-fulfilment of military duty:

1. If he has emigrated after he, on occasion of the draft from those owing military duty, has been enrolled as a recruit for service in the standing army.

2. If he has emigrated whilst he stood in service under the flag, or had a leave of absence only for a limited time.

3. If, having a leave of absence for an unlimited time, or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand, a former Badener, naturalized in the United States, who, by or after his emigration, has transgressed or shall transgress the legal provisions on military duty by any acts or omissions other than those above enumerated in the clauses numbered one to three, can, on his return to his original country, neither be held subsequently to military service, nor remain liable to trial and punishment for the non-fulfilment of his military duty. Moreover, the attachment on the property of an emigrant for non-fulfilment of his military duty, except in the cases designated in the clauses numbered one to three, shall be removed so soon as he shall prove his naturalization in the United States according to the first article.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, concluded between the Grand Duchy of Baden on the one part and the United States of America on the other part, the thirtieth day of January, one thousand eight hundred and fifty-seven, remains in force without change.

ARTICLE IV.

The emigrant from the one state who, according to the first article, is to be held as a citizen of the other state shall not on his return to his original country be constrained to resume his former citizenship; yet if he shall of his own accord reacquire it and renounce the citizenship obtained by naturalization, such a renunciation is allowed, and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall remain in force until the end of twelve months after either of the contracting parties shall have given notice of such intention.

ARTICLE VI.

The present convention shall be ratified by His Royal Highness the Grand Duke of Baden and by the President, by and with the advice and consent of the Senate of the United States, and the ratifications shall be exchanged at Carlsruhe as soon as possible.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Carlsruhe, the 19th July, 1868.

[SEAL.]

[SEAL.]

GEORGE BANCROFT.

V. FREYDORF.

TREATY BETWEEN THE UNITED STATES AND THE KINGDOM
OF BAVARIA [15 Stat. at L. 661].

*Concluded May 26, 1868; Ratified September 18, 1868;
Proclaimed October 8, 1868.*

ARTICLE I.

Citizens of Bavaria, who have become, or shall become, naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years, shall be held by Bavaria to be American citizens, and shall be treated as such.

Reciprocally: Citizens of the United States of America who have become, or shall become, naturalized citizens of Bavaria, and shall have resided uninterruptedly within Bavaria five years, shall be held by the United States to be Bavarian citizens, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitation established by the laws of his original country, or any other remission of liability to punishment.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States, on the one part, and Bavaria, on the other part, the twelfth day of September, one thousand eight hundred and fifty-three, remains in force without change.

ARTICLE IV.

If a Bavarian, naturalized in America, renews his residence in Bavaria, without the intent to return to America, he shall be held to have renounced his naturalization in the United States.

Reciprocally, if an American, naturalized in Bavaria, renews his residence in the United States, without the intent to return to Bavaria, he shall be held to have renounced his naturalization in Bavaria.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by His Majesty the King of Bavaria, and by the President, by and with the advice and consent of the Senate of the United States, and the ratifications shall be exchanged at Munich within twelve months from the date hereof.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Munich, the 26th May, 1868.

[SEAL.]

GEORGE BANCROFT.

[SEAL.]

DR. OTTO FHR. VON VÖLDERNDORFF.

PROTOCOL.

Done at Munich, the 26th May, 1868.

The undersigned met to-day to sign the treaty agreed upon in conformity with their respective full powers, relating to the citizenship of those persons who emigrate from Bavaria to the United States of America, and from the United States of America to Bavaria; on which occasion the following observations, more exactly defining and explaining the contents of this treaty, were entered in the following protocol:

I. RELATING TO THE FIRST ARTICLE OF THE TREATY.

1. Inasmuch as the copulative "and" is made use of, it follows, of course, that not the naturalization alone, but an additional five years' uninterrupted residence is required before a person can be regarded as coming within the treaty; but it is by no means requisite that the five years' residence should take place after the naturalization. It is hereby further understood that if a Bavarian has been discharged from his Bavarian indigene, or on the other side, if an American has been discharged from his American citizenship in the manner legally prescribed by the government of his original country, and then acquires naturalization in the other country in a rightful and perfectly valid manner, then an additional five years' residence shall no longer be required, but a person so naturalized shall from the moment of his naturalization be held and treated as a Bavarian, and reciprocally as an American citizen.

2. The words "resided uninterruptedly" are obviously to be understood, not of a continued bodily presence, but in the legal sense, and therefore a transient absence, a journey, or the like, by no means interrupts the period of five years contemplated by the first article.

II. RELATING TO THE SECOND ARTICLE OF THE TREATY.

1. It is expressly agreed, that a person who, under the first article, is to be held as an adopted citizen of the other state, on his return to his original country can not be made punishable for the act of emigration itself, not even though at a later day he should have lost his adopted citizenship.

III. RELATING TO ARTICLE FOUR OF THE TREATY.

1. It is agreed on both sides, that the regulative powers granted to the two governments respectively, by their laws for protection against resident aliens, whose residence endangers peace and order in the land, are not affected by the treaty. In particular the regulation contained in the second clause of the tenth Article of the Bavarian military law of the 30th of January, 1868, according to which Bavarians emigrating from Bavaria before the fulfilment of their military duty can not be admitted to a permanent residence in the land till they shall have become thirty-two years old, is not affected by the treaty. But yet it is established and agreed, that by the expression "permanent residence," used in the said article, the above described emigrants are not forbidden to undertake a journey to Bavaria for a less period of time and for definite purposes, and the royal Bavarian government moreover cheerfully declares itself ready, in all cases in which the emigration has plainly taken place in good faith, to allow a mild rule in practice to be adopted.

2. It is hereby agreed that when a Bavarian naturalized in America and reciprocally an American naturalized in Bavaria takes up his abode once more in his original country without the intention of return to the country of his adoption, he does by no means thereby recover his former citizenship; on the contrary, in so far as it relates to Bavaria, it depends on his Majesty, the King,

whether he will, or will not in that event grant the Bavarian citizenship anew.

The article fourth shall accordingly have only this meaning, that the adopted country of the emigrant can not prevent him from acquiring once more his former citizenship; but not that the state to which the emigrant originally belonged is bound to restore him at once to his original relation.

On the contrary, the citizen naturalized abroad must first apply to be received back into his original country in the manner prescribed by its laws and regulations, and must acquire citizenship anew, exactly like any other alien.

But yet it is left to his own free choice, whether he will adopt that course or will preserve the citizenship of the country of his adoption.

The two plenipotentiaries give each other mutually the assurance that their respective governments in ratifying this treaty will also regard as approved and will maintain the agreements and explanations contained in the present protocol, without any further formal ratification of the same.

[SEAL.]

GEORGE BANCROFT.

[SEAL.]

DR. OTTO FHR. VON VÖLDERNDORFF.

CONVENTION BETWEEN THE UNITED STATES AND BELGIUM.
[16 Stat. at L. 747].

*Concluded November 16, 1868; Ratifications Exchanged
July 10, 1869; Proclaimed July 30, 1869.*

ARTICLE I.

Citizens of the United States who may or shall have been naturalized in Belgium will be considered by the United States as citizens of Belgium. Reciprocally, Belgians who may or who shall have been naturalized in the

United States will be considered by Belgium as citizens of the United States.

ARTICLE II.

Citizens of either contracting party, in case of their return to their original country, can be prosecuted there for crimes or misdemeanors committed before naturalization, saving to them such limitations as are established by the laws of their original country.

ARTICLE III.

Naturalized citizens of either contracting party who shall have resided five years in the country which has naturalized them, can not be held to the obligation of military service in their original country, or to incidental obligation resulting therefrom, in the event of their return to it, except in cases of desertion from organized and embodied military or naval service, or those that may be assimilated thereto by the laws of that country.

ARTICLE IV.

Citizens of the United States naturalized in Belgium shall be considered by Belgium as citizens of the United States when they shall have recovered their character as citizens of the United States according to the laws of the United States. Reciprocally, Belgians naturalized in the United States shall be considered as Belgians by the United States when they shall have recovered their character as Belgians according to the laws of Belgium.

ARTICLE V.

The present convention shall enter into execution immediately after the exchange of ratifications, and shall remain in force for ten years. If, at the expiration of that

period, neither of the contracting parties shall have given notice six months in advance of its intention to terminate the same, it shall continue in force until the end of twelve months after one of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate, and by his Majesty the King of the Belgians, with the consent of Parliament, and the ratifications shall be exchanged at Brussels within twelve months from the date hereof, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same, and affixed thereto their seals.

Made in duplicate at Brussels, the sixteenth of November, one thousand eight hundred and sixty-eight.

[SEAL.]

H. S. SANFORD.

[SEAL.]

JULES VANDER STICHELEN.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA
AND DENMARK [17 Stat. at L. 941].

*Concluded July 20, 1872; Ratified January 22, 1873;
Ratifications Exchanged March 14, 1873; Pro-
claimed April 15, 1873.*

ARTICLE I.

Citizens of the United States of America who have become, or shall become, and are, naturalized, according to law, within the Kingdom of Denmark as Danish subjects, shall be held by the United States of America to be in all respects and for all purposes Danish subjects,

and shall be treated as such by the United States of America.

In like manner, Danish subjects who have become, or shall become, and are, naturalized, according to law, within the United States of America as citizens thereof, shall be held by the Kingdom of Denmark to be in all respects and for all purposes as citizens of the United States of America, and shall be treated as such by the Kingdom of Denmark.

ARTICLE II.

If any such citizen of the United States, as aforesaid, naturalized within the Kingdom of Denmark as a Danish subject, should renew his residence in the United States, the United States government may, on his application, and on such conditions as that government may see fit to impose, readmit him to the character and privileges of a citizen of the United States, and the Danish government shall not, in that case, claim him as a Danish subject on account of his former naturalization.

In like manner, if any such Danish subject, as aforesaid, naturalized within the United States as a citizen thereof, should renew his residence within the Kingdom of Denmark, His Majesty's government may, on his application, and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a Danish subject, and the United States government shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

ARTICLE III.

If, however, a citizen of the United States, naturalized in Denmark, shall renew his residence in the former country without the intent to return to that in which

he was naturalized, he shall be held to have renounced his naturalization.

In like manner, if a Dane, naturalized in the United States, shall renew his residence in Denmark without the intent to return to the former country, he shall be held to have renounced his naturalization in the United States.

The intent not to return may be held to exist when a person naturalized in the one country shall reside more than two years in the other country.

ARTICLE IV.

The present convention shall go into effect immediately on or after the exchange of the ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE V.

The present convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Denmark, and the ratifications shall be exchanged at Copenhagen as soon as may be, within eight months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Copenhagen, the twentieth day of July, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.]

MICHAEL J. CRAMER.

[SEAL.]

O. D. ROSENÖRN-LEHN.

CONVENTION BETWEEN THE UNITED STATES AND
GREAT BRITAIN [16 Stat. at L. 775].

*Concluded May 13, 1870; Ratifications Exchanged
August 10, 1870; Proclaimed September 16, 1870.*

ARTICLE I.

Citizens of the United States of America who have become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of Article II, be held by the United States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States.

Reciprocally, British subjects who have become, or shall become, and are naturalized according to law within the United States of America as citizens thereof, shall, subject to the provisions of Article II, be held by Great Britain to be in all respects and for all purposes citizens of the United States, and shall be treated as such by Great Britain.

ARTICLE II.

Such citizens of the United States as aforesaid who have become and are naturalized within the dominions of Her Britannic Majesty as British subjects, shall be at liberty to renounce their naturalization and to resume their nationality as citizens of the United States, provided that such renunciation be publicly declared within two years after the exchange of the ratifications of the present convention.

Such British subjects as aforesaid who have become and are naturalized as citizens within the United States, shall be at liberty to renounce their naturalization and to resume their British nationality, provided that such

renunciation be publicly declared within two years after the twelfth day of May, 1870.

The manner in which this renunciation may be made and publicly declared shall be agreed upon by the governments of the respective countries.

ARTICLE III.

If any such citizen of the United States as aforesaid, naturalized within the dominions of her Britannic Majesty, should renew his residence in the United States, the United States government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a citizen of the United States, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization.

In the same manner, if any such British subject as aforesaid naturalized in the United States should renew his residence within the dominions of her Britannic Majesty, her Majesty's government may, on his own application and on such conditions as that government may think fit to impose, readmit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

ARTICLE IV.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by her Britannic Majesty, and the ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

In witness whereof the respective plenipotentiaries

have signed the same, and have affixed thereto their respective seals.

Done at London, the thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

JOHN LOTHROP MOTLEY.

[SEAL.]

CLARENDON.

SUPPLEMENTAL CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN CONCERNING THE RENUNCIATION OF NATURALIZATION IN CERTAIN CASES [17 Stat. at L. 841].

Signed February 23, 1871; Ratified March 24, 1871; Ratifications Exchanged May 4, 1871; Proclaimed May 5, 1871.

ARTICLE I.

Any person, being originally a citizen of the United States, who had previously to May 13th, 1870, been naturalized as a British subject, may, at any time before August 10th, 1872, and any British subject who, at the date first aforesaid, had been naturalized as a citizen within the United States, may, at any time before May 12th, 1872, publicly declare his renunciation of such naturalization by subscribing an instrument in writing substantially in the form hereunto appended, and designated as Annex A.

Such renunciation, by an original citizen of the United States, of British nationality, shall, within the territories and jurisdiction of the United States, be made in duplicate, in the presence of any court authorized by law for the time being to admit aliens to naturalization, or before the clerk or prothonotary of any such court: If the declarant be beyond the territories of the United States, it shall be made in duplicate, before any diplomatic or consular officer of the United States. One of such duplicates shall remain of record in the custody of the court or officer in whose presence it was made; the

other shall be, without delay, transmitted to the Department of State.

Such renunciation, if declared by an original British subject, of his acquired nationality as a citizen of the United States, shall, if the declarant be in the United Kingdom of Great Britain and Ireland, be made in duplicate, in the presence of a justice of the peace; if elsewhere in Her Britannic Majesty's dominions, in triplicate, in the presence of any judge of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law, in the place in which the declarant is, to administer an oath for any judicial or other legal purpose: if out of Her Majesty's dominions, in triplicate, in the presence of any officer in the diplomatic or consular service of Her Majesty.

ARTICLE II.

The contracting parties hereby engage to communicate each to the other, from time to time, lists of the persons who, within their respective dominions and territories, or before their diplomatic and consular officers, have declared their renunciation of naturalization, with the dates and places of making such declarations, and such information as to the abode of the declarants, and the times and places of their naturalization, as they may have furnished.

ARTICLE III.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty, and the ratifications shall be exchanged at Washington as soon as may be convenient.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at Washington the twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.]

HAMILTON FISH.

[SEAL.]

EDW'D THORNTON.

ANNEX A.

I, A. B., of [insert abode], being originally a citizen of the United States of America, [or a British subject,] and having become naturalized within the dominions of Her Britannic Majesty as a British subject, [or as a citizen within the United States of America,] do hereby renounce my naturalization as a British subject, [or citizen of the United States,] and declare that it is my desire to resume my nationality as a citizen of the United States, [or British subject.]

(Signed) A. B.

Made and subscribed to before me,, in [insert country or othersubdivision, and State, province, colony, legation, or consulate,] this day of, 187.....

(Signed) E. F.,

Justice of the Peace, [or other title.]

[SEAL.]

HAMILTON FISH.

[SEAL.]

EDW'D THORNTON.

NATURALIZATION TREATY BETWEEN THE UNITED STATES
AND THE REPUBLIC OF HAITI [33 Stat. at L. 2101].

Signed at Washington March 22, 1902; Ratification advised by the Senate February 1, 1904; Ratified by the President March 17, 1904; Ratified by Haiti, April 24, 1903; Ratifications Exchanged at Washington March 19, 1904; Proclaimed March 24, 1904.

ARTICLE I.

Citizens of the United States of America who shall have been duly naturalized as citizens of Haiti, and who shall have resided uninterruptedly in Haiti during a period of five years, shall be recognized by the United States as citizens of Haiti.

Reciprocally, citizens of Haiti who shall have been duly naturalized as citizens of the United States of America, and who shall have resided uninterruptedly in the United States during a period of five years, shall be recognized by Haiti as citizens of the United States.

This article shall apply as well to those already naturalized in either country as those hereafter naturalized.

ARTICLE II.

The person who, after having become a naturalized citizen of one of the contracting States, shall return to live in the country of his origin, without intention to return to the country where he has been naturalized, shall be considered as having renounced the nationality obtained through naturalization.

ARTICLE III.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

ARTICLE IV.

The naturalized citizens of either State who return to their country of origin, will be there liable to prosecution and punishment in conformity to the laws for the crimes or misdemeanors committed before their emigration and that are not covered by the statute of limitations.

ARTICLE V.

The declaration of intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE VI.

The present treaty shall remain in force for ten years from the date of the exchange of ratifications; and unless one of the contracting parties shall notify the other of its intention to terminate it one year before the expiration of that period, the said treaty shall continue in force from year to year until the expiration of one year after official notice shall have been given by either of the contracting governments of a purpose to terminate it.

ARTICLE VII.

The present treaty shall be submitted to the approval and ratification of the respective appropriate authorities of each of the contracting parties, and the ratifications shall be exchanged at Washington as soon as possible within twelve months from the date hereof.

In witness whereof, the respective Plenipotentiaries have signed the foregoing articles, and have affixed their seals.

Done in duplicate at the City of Washington, in the English and French languages this twenty-second day of March, 1902.

[SEAL.]

JOHN HAY.

[SEAL.]

J. N. LÉGER.

TREATY BETWEEN THE UNITED STATES AND HAITI EXTENDING THE TIME WITHIN WHICH MAY BE EFFECTED THE EXCHANGE OF RATIFICATIONS OF THE TREATY OF NATURALIZATION BETWEEN THE TWO COUNTRIES, SIGNED MARCH 22, 1902 [33 Stat. at L. 2157].

Signed at Washington February 28, 1903; Ratification advised by the Senate February 1, 1904; Ratified by the President March 17, 1904; Ratified by Haiti April 24, 1903; Ratifications Exchanged at Washington March 19, 1904; Proclaimed March 24, 1904.

SOLE ARTICLE.

The respective ratifications of the said treaty shall be exchanged as soon as possible, and within twelve months from March 22, 1903.

Done in duplicate at Washington, in the English and French languages, this 28th day of February, A. D. 1903.

[SEAL.]

JOHN HAY.

[SEAL.]

J. N. LÉGER.

CONVENTION BETWEEN THE UNITED STATES AND HESSE
[16 Stat. at L. 743].

Concluded August 1, 1868; Ratifications Exchanged July 23, 1869; Proclaimed August 31, 1869.

ARTICLE I.

Citizens of the parts of the Grand Duchy of Hesse not included in the North German Confederation, who have become or shall become naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States five years, shall be held by the

Grand Ducal Hessian government to be American citizens, and shall be treated as such.

Reciprocally: Citizens of the United States of America, who have become or shall become naturalized citizens of the above-described parts of the Grand Duchy of Hesse, and shall have resided uninterruptedly therein five years, shall be held by the United States to be citizens of the Grand Duchy of Hesse, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party, on return to the territory of the other party, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration, saving always the limitation established by the laws of his original country.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States of America and the Grand Duchy of Hesse, on the 16th of June, 1852 [10 Stat. at L. 964], remains in force, without change.

ARTICLE IV.

If a Hessian, naturalized in America, but originally a citizen of the parts of the Grand Duchy not included in the North German Confederation, renews his residence in those parts without the intent to return to America, he shall be held to have renounced his naturalization in the United States.

Reciprocally: If an American, naturalized in the Grand Duchy of Hesse, (within the above-described parts,) renews his residence in the United States without the intent to return to Hesse, he shall be held to have renounced his naturalization in the Grand Duchy.

The intent not to return may be held to exist, when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately, on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President of the United States of America, and by his Royal Highness the Grand Duke of Hesse and by Rhine, &c. The ratification of the first is to take effect by and with the advice and consent of the Senate of the United States; on the Grand Ducal Hessian side, the assent of the States of the Grand Duchy is reserved, in so far as it is required by the constitution.

The ratifications shall be exchanged at Berlin within one year of the present date.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Darmstadt, the 1st of August, 1868.

[SEAL.] GEO. BANCROFT.

[SEAL.] FRIEDRICH FREIHERR VON LINDELOF.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND
THE NORTH GERMAN CONFEDERATION [15 Stat. at L. 615].

Concluded February 22, 1868; Ratification Advised by Senate, with Amendment, March 26, 1868; Ratified by President March 30, 1868; Ratified by King of Prussia, April 11, 1868; Ratifications Exchanged at Berlin May 9, 1868; Proclaimed by President May 27, 1868.

ARTICLE I.

Citizens of the North German Confederation, who become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years, shall be held by the North German Confederation to be American citizens, and shall be treated as such.

Reciprocally: Citizens of the United States of America who become naturalized citizens of the North German Confederation, and shall have resided uninterruptedly within North Germany five years, shall be held by the United States to be North German citizens, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

This article shall apply as well to those already naturalized in either country as those hereafter naturalized.

ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration; saving, always, the limitation established by the laws of his original country.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part, and Prussia and other States of Germany on the other part, the sixteenth day of June, 1852, is hereby extended to all the States of the North German Confederation.

ARTICLE IV.

If a German naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States.

Reciprocally: If an American naturalized in North Germany renews his residence in the United States, without the intent to return to North Germany, he shall be held to have renounced his naturalization in North Germany.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by his Majesty the King of

Prussia in the name of the North German Confederation; and the ratifications shall be exchanged at Berlin within six months from the date hereof.

In faith whereof, the plenipotentiaries have signed and sealed this convention.

Berlin, the 22d of February, 1868.

[Seal.]

GEORGE BANCROFT.

[Seal.]

BERNHARD KÖNIG.

CONVENTION AND PROTOCOL BETWEEN THE UNITED STATES OF AMERICA AND SWEDEN AND NORWAY [17 Stat. at L. 809].

Signed May 26, 1869; Ratified December 17, 1870; Ratifications Exchanged June 14, 1871; Proclaimed January 12, 1872.

ART. I.

Citizens of the United States of America who have resided in Sweden or Norway for a continuous period of at least five years, and during such residence have become and are lawfully recognized as citizens of Sweden or Norway, shall be held by the government of the United States to be Swedish or Norwegian citizens, and shall be treated as such.

Reciprocally, citizens of Sweden or Norway who have resided in the United States of America for a continuous period of at least five years, and during such residence have become naturalized citizens of the United States, shall be held by the government of Sweden and Norway to be American citizens, and shall be treated as such.

The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of citizenship legally acquired.

ART. II.

A recognized citizen of the one party, on returning to the territory of the other, remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration, but not for the emigration itself, saving always the limitation established by the laws of his original country and any other remission of liability to punishment.

ART. III.

If a citizen of the one party, who has become a recognized citizen of the other party, takes up his abode once more in his original country and applies to be restored to his former citizenship, the government of the last-named country is authorized to receive him again as a citizen, on such conditions as the said government may think proper.

ART. IV.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part, and Sweden and Norway on the other part, the 21st March, 1860 [12 Stat. at L. 1125], remains in force without change.

ART. V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice to the other of such intention.

ART. VI.

The present convention shall be ratified by the President, by and with the advice and consent of the Senate of the United States, and by His Majesty the King of Sweden and Norway; and the ratifications shall be exchanged at Stockholm within twenty-four months from the date hereof.

In faith whereof the Plenipotentiaries have signed and sealed this convention.

Stockholm, May 26, 1869.

[SEAL.]

JOSEPH J. BARTLETT.

[SEAL.]

C. WACHTMEISTER.

PROTOCOL.

Done at Stockholm, May 26, 1869.

The undersigned met to-day to sign the convention agreed upon in conformity with their respective full powers, relating to the citizenship of those persons who emigrate from the United States of America to Sweden and Norway, and from Sweden and Norway to the United States of America; on which occasion the following observations, more exactly defining and explaining the contents of this convention, were entered in the following protocol:—

I. Relating to the 1st article of the convention.

It is understood that if a citizen of the United States of America has been discharged from his American citizenship, or, on the other side, if a Swede or a Norwegian has been discharged from his Swedish or Norwegian citizenship, in the manner legally prescribed by the government of his original country, and then in the other country in a rightful and perfectly valid manner acquires citizenship, then an additional five years' residence shall no longer be required; but a person who has in that manner been recognized as a citizen of the other

country shall, from the moment thereof, be held and treated as a Swedish or Norwegian citizen, and, reciprocally, as a citizen of the United States.

II. Relating to the second article of the convention.

If a former Swede or Norwegian, who under the first article is to be held as an adopted citizen of the United States of America, has emigrated after he has attained the age when he becomes liable to military service, and returns again to his original country, it is agreed that he remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration, but not for the act of emigration itself, unless thereby have been committed any punishable action against Sweden or Norway, or against a Swedish or Norwegian citizen, such as non-fulfilment of military service, or desertion from the military force or from a ship, saving always the limitation established by the laws of the original country, and any other remission of liability to punishment; and that he can be held to fulfil, according to the laws, his military service, or the remaining part thereof.

III. Relating to the third article of the convention.

It is further agreed that if a Swede or Norwegian, who has become a naturalized citizen of the United States, renews his residence in Sweden or Norway without the intent to return to America, he shall be held by the government of the United States to have renounced his American citizenship.

The intent not to return to America may be held to exist when the person so naturalized resides more than two years in Sweden or Norway.

[SEAL.]

JOSEPH J. BARTLETT.

[SEAL.]

C. WACHTMEISTER.

TREATY BETWEEN THE UNITED STATES AND THE KINGDOM
OF WÜRTTEMBERG [16 Stat. at L. 735].

Concluded July 27, 1868; Proclaimed March 7, 1870.

ARTICLE I.

Citizens of Württemberg, who have become or shall become naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States five years, shall be held by Württemberg to be American citizens and shall be treated as such. Reciprocally, citizens of the United States of America who have become or shall become naturalized citizens of Württemberg, and shall have resided uninterruptedly within Württemberg five years, shall be held by the United States to be citizens of Württemberg, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

ARTICLE II.

A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration; saving always the limitation established by the laws of his original country, or any other remission of liability to punishment.

ARTICLE III.

The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between Württemberg and the United States the 16 June, 1852—13 October, 1853 [10 Stat. at L. 971], remains in force without change.

ARTICLE IV.

If a Württemberger, naturalized in America, renews his residence in Württemberg without the intent to return to America, he shall be held to have renounced his naturalization in the United States. Reciprocally, if an American naturalized in Württemberg, renews his residence in the United States without the intent to return to Württemberg, he shall be held to have renounced his naturalization in Württemberg. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

ARTICLE V.

The present convention shall go into effect immediately on the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention.

ARTICLE VI.

The present convention shall be ratified by his Majesty the King of Württemberg, with the consent of the Chambers of the kingdom, and by the President by and with the advice and consent of the Senate of the United States, and the ratifications shall be changed at Stuttgart as soon as possible, within twelve months from the date hereof.

In faith whereof the plenipotentiaries have signed and sealed this convention.

Stuttgart, the twenty-seventh of July, one thousand eight hundred and sixty-eight.

[SEAL.]

GEO. BANCROFT.

[SEAL.]

FREIHERR VON VARNBÜLER.

EXECUTIVE ORDERS OF APRIL 6 AND APRIL 8, 1907.

AMENDING THE INSTRUCTIONS TO DIPLOMATIC OFFICERS
AND THE CONSULAR REGULATIONS RELATIVE TO
EXPATRIATION, CITIZENSHIP, NATURALIZATION AND
PASSPORTS.*

Executive Order of April 6, 1907.

It is hereby ordered that the instructions to the diplomatic officers of the United States and the regulations prescribed for the use of the consular service of the United States be amended in the following particulars, the numbers of the paragraphs amended being the same in both the instructions and the regulations.

Paragraph 138 shall read as follows:

Children of Citizens Born Abroad.—All children born out of the limits and jurisdiction of the United States whose fathers were at the time of their birth citizens thereof are citizens of the United States; but the rights of citizenship do not descend to children whose fathers never resided in the United States. All children who are, in accordance with this paragraph, born citizens of the United States, and who continue to reside outside of the United States, are required in order to receive the protection of this government, upon reaching the age of eighteen years to record at an American Consulate their intention to become residents and remain citizens,

*To give effect to the principal provisions of these Orders, the Department of State, on April 19, 1907, issued a set of circular instructions, six in number, addressed to the American diplomatic and consular officers. The subjects of these circulars, and the reference to the pages of this volume where they may be found, are as follows:

“Children of Citizens Born Abroad,” pp. 350, 351.

“Expatriation,” pp. 341–343.

“Issuance of Passports,” pp. 380–384.

“Registration of American Citizens,” pp. 352–354.

“Registration of Women Who Desire to Resume or Retain American Citizenship,” pp. 241–243 and 257, 258.

“Reports of Fraudulent Naturalization,” pp. 136–138.

and upon reaching their majority are further required to take the oath of allegiance to the United States.—R. S. Sec. 1993; Act of March 2, 1907, Sec. 6.

Paragraph 141 shall read as follows:

Wife of Citizen.—Any white woman or woman of African nativity or descent or Indian woman married to a citizen of the United States is a citizen thereof; and it is immaterial whether the husband became a citizen before or after marriage. Any woman who acquires American citizenship by marriage shall be assumed to have retained it after the termination of the marital relation by death or absolute divorce if she continues to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens; or, if she resides abroad, she may retain American citizenship by registering as an American citizen before a United States Consul within one year after the termination of the marital relation.—R. S. Sec. 1994; 25 Stat. L. 392; Act of March 2, 1907, Sec. 4.

After paragraph 141, a new paragraph shall be added as follows:

An American Woman Who Marries a Foreigner.—An American woman who marries a foreigner takes the nationality of her husband. At the termination of the marital relation, by death or absolute divorce, she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.—Act of March 2, 1907, Sec. 4.

Paragraph 142 shall read as follows:

Children of Naturalized Citizens.—The naturalization or resumption of American citizenship of the parents confers American citizenship upon the minor children and such citizenship shall begin at the time such minor

children begin to reside permanently in the United States.—Act of March 2, 1907, Sec. 5.

Paragraph 143 shall read as follows:

Declaration of Intention.—The declaration of intention to become a citizen of the United States does not make one a citizen, and the certificate of a court that such declaration has been made is not evidence of citizenship; but when any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized his widow and minor children may, by complying with the other provisions of the naturalization laws, be admitted to citizenship without making the declaration of intention.—Act of June 29, 1906, Sec. 4, Par. 6.

Paragraph 144 shall read as follows:

Expatriation.—An American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state. When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen, and his place of general abode shall be deemed his place of residence during the said years: Provided, That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe.

An American citizen shall not be allowed to expatriate himself when this country is at war.—Act of March 2, 1907, Sec. 2.

After paragraph 144, add the following three paragraphs:

Registration to Resume or Retain Citizenship.—When an American woman has married a foreigner and he dies

or they are absolutely divorced, in order to resume her rights as an American citizen, she must register with an American consulate within one year after the termination of the marital relation. Whenever any foreign woman has acquired American citizenship through her marriage, upon the death of her husband or upon their absolute divorce she must, if she is abroad and desires to retain her American citizenship, register as an American citizen before a United States consul within one year after the termination of the marital relation. All minor children, born of American parents outside of the United States, must, in order to receive the protection of this government, at the age of eighteen years, record at an American consulate their intention to become residents and remain citizens of the United States.—Act of March 2, 1907, Sections 3, 4, and 6.

Oath of Allegiance.—Every child born without the United States of American parents and resident abroad is required, in order to conserve his American citizenship, to take the oath of allegiance to the United States before an American consul, upon attaining his majority.—Act of March 2, 1907, Sec. 6.

Duplicates of Evidence of Citizenship.—Diplomatic and consular officers are required to file with the Department of State duplicates of any evidence, registration, or other acts, taken before them in conservation or resumption of citizenship and the right to protection.—Act of March 2, 1907, Sec. 7.

Paragraph 149 shall read as follows:

To Whom Issued.—No passport shall be granted or issued to or verified for any persons other than citizens of the United States or loyal residents of the insular possessions of the United States by diplomatic or consular officers. In his discretion the Secretary of State may issue passports to those who have made the declaration of intention to become citizens of the United States, but such

passports are not permitted to be issued by diplomatic and consular officers.—Section 4076, R. S.; Act of June 14, 1902; Act of March 2, 1907, Sec. 1.

Paragraph 150 shall read as follows:

When Passports May be Issued.—Passports can not be issued by diplomatic or consular officers, if the applicant has time to apply to the Department of State and await its reply. Where inconvenience or hardship would result to a person entitled to receive a passport unless he received it at once, a diplomatic officer, or a consular officer who shall have received authority to do so from the Secretary of State, may issue to such person an emergency passport, good for a period not to exceed six months from the date of issuance, and to be used for a purpose which shall be stated in the passport.

This paragraph shall become effective July 1, 1907.

Paragraph 151 shall read as follows:

Applications.—Persons entitled to receive passports who desire to secure them when they are abroad may make applications therefor to the Department of State through a diplomatic or consular officer. Native citizens thus applying must make an affidavit with respect to birth, take the oath of allegiance, and furnish identification by a creditable person, all in duplicate and according to Form No. ——. Naturalized citizens must comply with the same requirements, using Form No. —; and, if claiming citizenship through naturalization of husband or parent, using Form No. ——. A naturalized citizen must also exhibit his certificate of naturalization or that of the husband or parent through whom citizenship is claimed, or a duly certified copy of the court record thereof. Further evidence of the applicant's citizenship may be required, if deemed necessary. A loyal resident of an insular possession of the United States in addition to the information now required in the case of a citizen of the United States must state that he owes allegiance

to the United States and does not acknowledge allegiance to any other government, and must submit an affidavit from at least two credible witnesses having good means of knowledge in substantiation of his statements of birth, residence and loyalty. The identity of an applicant for a passport should always be established when the application is taken.

This paragraph shall become effective July 1, 1907.

Paragraph 152 shall read as follows:

Expiration of Passports.—A passport issued by the Department is good for a period of two years, when it expires; but it may be renewed for a further period of two years by a diplomatic officer or by a consular officer who has received authority for the purpose from the Secretary of State. It is permissible to renew passports only once.

This paragraph shall become effective July 1, 1907.

Paragraph 153 shall read as follows:

Old Passport in Lieu of Naturalization Certificate.—An American citizen who is abroad and who holds a passport which has expired after renewal may apply through a diplomatic officer or a consular officer for a new passport, and the old passport will be accepted as prima facie evidence that the citizenship of the applicant was properly proved when the old passport was granted, and a naturalized citizen need not, therefore, be required to produce again the certificate of naturalization through which he acquired his citizenship. The old passport should be retained and sent to the Department of State with the application. If there is any doubt surrounding the case, however, the applicant should be required to produce the same evidence that would be required of him if he were making his first application for a passport.

Paragraph 154 shall be struck out.

Paragraph 159 shall read as follows:

Fees.—An official fee equivalent to one dollar in the gold coin of the United States must be collected for each passport issued.

Paragraph 160 shall read as follows:

Visa.—A diplomatic officer or a consular officer, including a consular agent, may visa or verify regularly issued passports by endorsing thereon the word "Good" in the language of the country and affixing to the endorsement his official signature and seal. A diplomatic officer should visa a passport only when there is no American consulate established in the city where the mission is situated, or when the consular officer is absent, or the government of the country refuses to acknowledge the validity of the consular visa. Whenever a passport without signature is presented to be visaed the holder should be required to sign it before it is visaed by a diplomatic or consular officer. An official fee equivalent to one dollar in the gold coin of the United States should be collected for each passport visaed. No visa shall be attached to a passport after its validity has expired.

Paragraph 163 shall read as follows:

Return of Passports.—As soon as an emergency passport is issued by a diplomatic or consular officer he shall transmit to the Department of State a duplicate of the application and a statement of the proof accepted by him for the issuance of the passport and of the reason why the issuance of the passport was necessary. Whenever an application for a passport is made to the Department of State through a diplomatic or consular officer he shall transmit a duplicate of the application and of the accompanying proof of the right to receive a passport to the Department of State, but he need not, unless otherwise instructed, transmit a certificate of naturalization.

This paragraph shall become effective July 1, 1907.

Add, as a separate paragraph, after paragraph 169:

When Protection Should be Denied.—Any one who has expatriated himself is not entitled to intervention on the part of any diplomatic or consular officer of the United States. (See Paragraph 144.)

After paragraph 170 add:

Reports of Fraudulent Naturalization.—When any alien who has secured naturalization of the United States shall proceed abroad within five years after his naturalization and shall take up his permanent residence in any foreign country within five years after the date of his naturalization, it shall be deemed prima facie evidence that he did not intend in good faith to become a citizen of the United States when he applied for naturalization, and in the absence of countervailing evidence it shall be sufficient in the proper proceedings to authorize the cancellation of his certificate of citizenship as fraudulent. Diplomatic and consular officers shall furnish the Department of State, to be transmitted to the Department of Justice, the names of those within their jurisdictions, respectively, who are subject to the provisions of this requirement, and such statements from diplomatic and consular officers shall be certified to by such officers under their official seal, and are under the law admissible in evidence in all courts to cancel certificates of naturalization.—Act of June 29, 1906, Sec. 15.

THEODORE ROOSEVELT.

The White House, April 6, 1907.

Executive Order of April 8, 1907.

It is hereby ordered that paragraph 172 of the regulations prescribed for the use of the consular service of the United States be so amended as to read as follows:

Registration of American Citizens.—Principal consular officers should keep at their offices a register of all American citizens residing in their several districts, and will therefore make it known that such a register is kept and invite all resident Americans to cause their names to be entered therein. The same general principles govern applications for registry which govern applications for passports. (Paragraph 151.)

The register should show the date of registration, the full name of the person registered, the date and place of his birth, the place of his last domicile in the United States, the date of his arrival in the foreign country where he is residing and his place of residence therein, the reasons for his foreign residence, whether or not he is married and if married the name of his wife, her place of birth and residence, and if he has children the name, date, and place of birth and residence of each. The nature of the proof accepted to establish his citizenship should also appear, and his signature should be inscribed in the register.

Consuls may issue certificates of the registration prescribed above for use with the authorities of the place where the person registered is residing. Each certificate shall set forth the facts contained in the register and shall be good for use for one year only and shall be in a form prescribed by the Secretary of State (Form No. —.). When a certificate expires a new one may be issued, the old one being destroyed, if it is clearly shown that the residence abroad has not assumed a permanent character. Persons who hold passports which have not expired shall not be furnished with certificates of registration, and it is strictly forbidden to furnish them to be used for traveling in the place of passports. Returns of all registrations made and of all certificates of registration issued shall be made to the embassy or

legation in the country in which the consulate is situated and to the Secretary of State at intervals and under regulations to be prescribed by him. No fee will be charged for registration nor for any service connected therewith, nor for certificates of registration.

This paragraph shall go into effect July 1, 1907.

THEODORE ROOSEVELT.

The White House, April 8, 1907.

NATURALIZATION REGULATIONS.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,

Washington, October 2, 1906.

1. On and after September 27, 1906, declarations of intention to become citizens of the United States shall be filed with the clerks of such state courts only as have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited."

2. Declarations of intention made prior to September 27, 1906, before clerks of courts having jurisdiction to naturalize aliens under the provisions of the law existing at the time such declarations were made, may be used in lieu of the declarations required by the act of June 29, 1906, at any time after the expiration of two years from the date when made.

3. Aliens who have made declarations of intention prior to September 27, 1906, under the provisions of law in force at the time of making such declarations, cannot be required, as a preliminary to filing their petitions for naturalization, to file new declarations of intention under the act of June 29, 1906; nor are such aliens required, as a condition precedent to naturalization, to speak the English language.

4. Aliens who make the declaration of intention required by law prior to September 27, 1906, unless they can be naturalized before that date under the laws then in force, must comply with the requirements of the act of June 29, 1906, in regard to the filing of petitions for naturalization and furnishing proof, except that they will not be required to speak the English language or to sign petitions in their own handwriting.

5. Declarations of intention will be furnished in bound

volumes (Form 2202, 2202A, or 2202B), as a court record, varying in size according to the amount of such business transacted by the court. In addition to the bound records, the duplicate and triplicate declarations of intention (Form 2203) will be furnished as loose sheets attached together and perforated, so that they can be readily torn apart, the triplicate to be given to the petitioner and the duplicate to be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization). Each bound record will consist of the original declarations of intention, paged in consecutive order and indexed. These volumes are to be numbered and will form a permanent record of the court.

6. The original of the petitions for naturalization will also be furnished in bound volumes (Form 2204, 2204A or 2204B) of varying size, paged in consecutive order and indexed. The duplicate petitions (Form 2205) will be furnished as loose sheets and must be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) within thirty days after execution. The original petitions for naturalization must be filled out and signed in the bound volumes, and remain as a part of the permanent records of the office in which filed.

7. Certificates of naturalization (Form 2207) will be supplied in bound volumes consisting of original and duplicate certificates and stubs. Each original and duplicate certificate and the stub will be given the same serial number, the stub to the original certificate bearing a page number in addition to its serial number. Each book will bear a volume number, and the volume number and page of the stub must be given on the face of the certificate. The original certificate will be given to the petitioner in accordance with the final order of the court, and the duplicate shall be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) by registered mail within thirty days after the issu-

ance of the original, the stub to the original constituting a part of the permanent records of the court.

8. No certificate of naturalization shall be issued to a petitioner until after the judge of the court granting naturalization has signed the order to that effect.

9. Clerks of courts will be furnished with requisition blanks (Form 2201) on which are listed, by number and title, all blank forms, including record and order books, to be used in the naturalization of aliens, and these forms must be obtained exclusively from the Department of Commerce and Labor (Division of Naturalization), none other being official. Manila envelopes or jackets (Form 2211) will be furnished to clerks in which to place the triplicate declaration of intention or the original certificate of naturalization before delivering them to the person making the declaration or to the person naturalized.

10. The first supply of blank forms will be furnished upon the written application of the clerks of courts having jurisdiction to naturalize aliens, accompanied, in the case of clerks of state courts, by authoritative evidence (preferably the certificate of the attorney-general of the state) that the courts of which such clerks are officers have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Subsequent supplies of such blank forms will be furnished the clerks of courts having jurisdiction to naturalize aliens upon the receipt by the Bureau of Immigration and Naturalization (Division of Naturalization) of requisitions made on Form 2201.

11. Clerks of courts when first making applications to the Bureau of Immigration and Naturalization (Division of Naturalization) for supplies of the blank forms required in the naturalization of aliens shall state, as to the two years next preceding the date of such application, the number of declarations of intention filed with

them and the number of orders of naturalization made by their courts, respectively.

12. All applications for supplies of certificates of naturalization (Form 2207) should be accompanied by a statement of the number, if any, of certificates of naturalization issued by the clerks of courts making such applications since June 1, 1903, if such certificates failed to comply with the requirements of the Immigration Act of March 3, 1903.

13. Where the same court holds sessions at different places, whether a clerk is appointed at each of said places or the one clerk is required to transact the business of the court wherever it may sit, separate supplies shall be kept, in order to comply with the requirements of Section 14 of the Naturalization Act, which provides that the bound declarations of intention and of petitions for naturalization shall be in chronological order.

14. In every case in which the name of a naturalized alien is changed by order of court, as provided in Section 6, the clerks of courts are required to report to the Bureau of Immigration and Naturalization (Division of Naturalization), when transmitting to it the duplicate of the certificate of naturalization of the alien whose name is changed, both the original and the new name of the said person.

15. Within thirty days after posting the notice (Form 2206) required by Section 5 of the Naturalization Act of June 29, 1906, the clerk shall inform the Bureau of Immigration and Naturalization (Division of Naturalization), on Form 2209, of the date, as near as may be, for the final hearing of each and every petition for naturalization.

16. Applications for the issuance of declarations of intention (Form 2203) or certificates of naturalization (Form 2207), in lieu of declarations of intention or certificates of naturalization claimed to have been lost or

destroyed, shall be made under oath to the clerk of the court by which any such declarations of intention or certificates of naturalization were originally issued, and shall contain full information in regard to the lost or destroyed papers, and as to the time, place, and circumstances of such alleged loss or destruction. The clerk shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the above-mentioned applications, together with such information as he may have bearing upon the merits thereof, for investigation, and no such paper so applied for shall be issued until the Bureau of Immigration and Naturalization (Division of Naturalization) reports the results of its investigation as to the merits of the application.

17. In every case in which the clerk of a court issues, in accordance with the preceding rule, a declaration of intention (Form 2203) or a certificate of naturalization (Form 2207), upon proof of the loss or destruction of the original, he shall make an entry on the original declaration, or on the stub of the original certificate of naturalization, as the case may require, showing the issuance of a new paper and the number thereof, and shall immediately thereafter forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the duplicate of any such paper so issued.

18. If an alien is physically unable to speak, that fact should be stated in his petition for naturalization in lieu of the statement, "I am able to speak the English language."

19. Within thirty days after the sitting of a court in naturalization cases, the clerk of such court shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) on Form 2210 a list containing the name of each and every alien who, during such sitting of court, has been denied naturalization, and the reason or reasons for such denial.

20. The names of aliens making declarations of intention, or filing petitions for naturalization, must be entered in full in the appropriate places on the various blank forms, without abbreviation, and the signatures of such aliens must also be written out without abbreviation. Great care should be taken to get in every case the correct spelling of names.

21. Clerks of courts shall not receive declarations of intention (Form 2203) to become citizens from other aliens than white persons and persons of African nativity or of African descent.

22. Beginning with October 1, 1906, and on the first working day of each and every month thereafter, clerks of courts shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) duplicate declarations of intention and petitions for naturalization filed, and all duplicates of certificates of naturalization issued, during the preceding month. Duplicate petitions for naturalization and duplicate certificates of naturalization shall be forwarded by registered mail; and duplicate declarations of intention shall be sent therewith, provided the combined weight of the documents does not exceed four pounds, otherwise they shall be forwarded in a separate package by unregistered mail. The clerks making such shipments are required to notify the chief of the Division of Naturalization of the date thereof, by unregistered mail, on Form 2208, provided for that purpose. In transmitting petitions clerks of courts are directed to state that the names of the petitioners and their witnesses have been conspicuously posted, as required by law.

23. All fees provided for in Sec. 13 of the Act of June 29, 1906, collected by clerks of courts during any quarter of a fiscal year, shall be accounted for within thirty days after the close of such quarter, on Form 2212,

provided for that purpose; and one-half of all moneys so collected shall be remitted to the Chief of the Division of Naturalization, Bureau of Immigration and Naturalization, with said quarterly accounts. In cases where no naturalization business is transacted during any quarter, said blank form shall be forwarded as aforesaid with the words "No transactions" noted thereon.

24. Under Sec. 2166 of the Revised Statutes, an honorably discharged soldier, who is of the age of 21 years and upward, may be admitted to become a citizen of the United States without making the declaration of intention required of other aliens. Also, under the provisions of the Act of July 26, 1894, Ch. 165, any alien, of the age of 21 years and upward, who has enlisted, or may enlist in the United States Navy or Marine Corps, having been honorably discharged therefrom, after a residence of five years may be admitted to become a citizen of the United States without making the declaration of intention required of other aliens. Clerks of courts are therefore instructed to appropriately note upon the petition of such discharged alien soldier, or member of the Navy or Marine Corps, and upon the stub of the certificate of naturalization issued to him, in lieu of the information required thereon as to the filing of the declaration of intention, that the petitioner was an honorably discharged alien soldier, or member of the Navy or Marine Corps, and applied for citizenship under the said Sec. 2166, or the Act of July 26, 1894.

25. So far as is practicable, the clerks of courts having jurisdiction under the provisions of the naturalization laws will be furnished with appropriately addressed envelopes for communicating with the Bureau. When not using such envelopes, however, all communications, in addition to the other necessary address, should be plainly marked "Division of Naturalization."

26. Clerks of courts having jurisdiction to naturalize under the provisions of the Act of June 29, 1906, are requested, in case the foregoing rules and regulations fail to remove from their minds doubt as to the proper course of action in any case, to write to the chief of the Division of Naturalization, Bureau of Immigration and Naturalization, for instructions before taking such action.

LIST OF COURTS HAVING JURISDICTION UNDER
THE ACT OF JUNE 29, 1906, TO NATURALIZE
ALIENS.

ALABAMA.

United States Circuit and District Courts:

Northern District, Birmingham.

Middle District, Montgomery.

Southern District, Mobile.

Circuit courts of the several counties within the state.

City Courts:

Anniston.

Gadsden.

Birmingham.

Bessemer.

Mobile.

Montgomery.

Talladega.

Selma.

County Courts:

Tuscaloosa County Court.

Walker County Law and Equity Court.

ALASKA.

District Courts:

Division No. 1, Juneau.

Division No. 2, Nome.

Division No. 3, Fairbanks.

ARIZONA.

United States District Courts:

First District, Tucson.

Second District, Tombstone.

Third District, Phoenix.

Fourth District, Prescott.

Fifth District, Solomonville.

District courts of the several counties within the territory.

ARKANSAS.

United States Circuit and District Courts:

Eastern District: Little Rock, Batesville, Helena.

Western District: Fort Smith, Texarkana, Harrison.

Circuit courts of the several counties within the state

CALIFORNIA.

United States Circuit and District Courts:

Northern District, San Francisco.

Southern District, Los Angeles.

Superior courts of the several counties within the state.

COLORADO.

United States Circuit and District Courts:

Denver.

District courts of the several counties within the state.

CONNECTICUT.

United States Circuit and District Courts:

Hartford.

Superior courts of the several counties within the state.

DELAWARE.

United States Circuit and District Courts:

Wilmington.

Courts of chancery in and for the several counties within the state.

Superior courts in and for the several counties within the state.

DISTRICT OF COLUMBIA.

Supreme Court of the District of Columbia.

FLORIDA.

United States Circuit and District Courts:

Northern District, Pensacola.

Southern District, Jacksonville.

GEORGIA.

United States Circuit and District Courts:

Northern District, Atlanta.

Southern District, Savannah.

Superior courts of the several counties within the state.

HAWAII.

United States District Courts:

Honolulu.

Supreme court of the Territory of Hawaii.

Circuit courts of the several counties within the territory.

IDAHO.

United States Circuit and District Courts:

Boise.

District courts of the several counties within the state.

ILLINOIS.

United States Circuit and District Courts:

Northern District, Chicago.

Southern District, Springfield.

Eastern District, Danville.

Appellate and Supreme Court of the State of Illinois.

Superior Court of Cook county.

Circuit courts of the several counties within the state.

City Courts:

Alton.

Aurora.

Canton.

Chicago Heights.

East St. Louis.

Elgin.

Litchfield.

Matton.

Zion.

INDIANA.

United States Circuit and District Courts:

Indianapolis.

Supreme Court of Indiana, Indianapolis.

Circuit courts of the several counties within the state.

Superior Courts of the following named cities:

Fort Wayne.

Marion.

Kokomo.

Frankfort.

Laporte.

Anderson.

Indianapolis.

Valparaiso.

La Fayette.

Evansville.

Terre Haute.

INDIAN TERRITORY.

United States Courts:

Northern District, Vinita.

Miami Division.

Nowata Division.

Claremore Division.

Pryor Creek Division.

Bartlesville Division.

Tahlequah Division.

Sallisaw Division.

Western District, Muskogee:

Wewoka Division.

Eufaula Division.

Sapulpa Division.

Tulsa Division.

Okmulgee Division.

Wagoner Division.

Central District, South McAlester:

Atoka Division.

Antlers Division.

Durant Division.

Poteau Division.

Wilburton Division.

Southern District, Ardmore.

Pauls Valley Division.

Ada Division.

Ryan Division.

Purcell Division.

Marietta Division.

Chickasha Division.

Tishomingo Division.

Duncan Division.

IOWA.

United States Circuit and District Courts:

Northern District, Dubuque.

Southern District, Des Moines.

Supreme Court of Iowa, Des Moines.

District courts of the several counties within the state.

Superior Courts of the following named cities:

Cedar Rapids.

Council Bluffs.

KANSAS.

United States Circuit and District Courts:

Topeka.

District courts of the several counties within the state.

KENTUCKY.

United States Circuit and District Courts:

Eastern District:

Frankfort Division.

Covington Division.

Richmond Division.

London Division.

Catlettsburg Division.

Western District:

Louisville Division.

Owensboro Division.

Bowling Green Division.

Paducah Division.

Circuit courts of the several counties within the state.

LOUISIANA.

United States Circuit and District Courts:

Eastern District, New Orleans.

Western District, Shreveport.

District courts of the several parishes within the state.

MAINE.

United States Circuit and District Courts:

Portland.

Supreme judicial courts of the several counties within the state.

Superior Court of Cumberland County.

MARYLAND.

United States Circuit and District Courts:

Baltimore.

Circuit courts of the several counties within the state.

Court of Common Pleas of Baltimore.

Superior Court of Baltimore.

MASSACHUSETTS.

United States Circuit and District Courts:

Boston.

Supreme judicial and superior courts of the several counties within the state.

MICHIGAN.

United States Circuit and District Courts:

Eastern District, Detroit.

Western District, Grand Rapids.

Circuit courts of the several counties within the state.

Superior Court of Grand Rapids.

MINNESOTA.

United States Circuit and District Courts:

St. Paul.

District courts of the several counties within the state.

MISSISSIPPI.

United States Circuit and District Courts:

Northern District, Oxford.

Southern District, Jackson.

Circuit courts of the several counties within the state.

MISSOURI.

United States Circuit and District Courts:

Eastern District, St. Louis.

Western District:

Kansas City Division.

St. Joseph Division.

Jefferson City Division.

Springfield Division.

Circuit courts of the several counties within the state.

MONTANA.

United States Circuit and District Courts:

Helena.

District courts of the several counties within the state.

NEBRASKA.

United States Circuit and District Courts:

Omaha.

District courts of the several counties within the state.

NEVADA.

United States Circuit and District Courts:

Carson City.

District courts of the several counties within the state.

NEW HAMPSHIRE.

United States Circuit and District Courts:

Concord.

Superior courts of the several counties within the state.

NEW JERSEY.

United States Circuit and District Courts:

Trenton.

Supreme Court of New Jersey, Trenton.

Circuit courts of the several counties within the state.

NEW MEXICO.

United States District Courts:

Santa Fe Division.
Albuquerque Division.
Las Cruces Division.
Las Vegas Division.
Roswell Division.
Alamogordo Division.

NEW YORK.

United States Circuit and District Courts:

Northern District, Utica.
Southern District, New York.
Eastern District, Brooklyn.
Western District, Buffalo.

Supreme courts of the several counties within the state.

NORTH CAROLINA

United States Circuit and District Courts:

Eastern District:

Raleigh and Washington Division.
Wilmington Division.
Newbern Division.
Elizabeth City Division.

Western District:

Statesville Division.
Asheville Division.
Greensboro Division.
Wilkesboro Division.

Superior courts of the several counties within the state.

NORTH DAKOTA.

United States Circuit and District Courts:

Fargo.

District courts of the several counties within the state.

OHIO.

United States Circuit and District Courts:

Northern District, Cleveland.

Southern District, Cincinnati.

Court of common pleas of the several counties within the state.

OKLAHOMA.

United States District Courts:

Guthrie Division.

El Reno Division.

Oklahoma Division.

Perry Division.

Enid Division.

Alva Division.

Anadarko Division.

OREGON.

United States Circuit and District Courts:

Portland.

Circuit courts of the several counties within the state.

PENNSYLVANIA.

United States Circuit and District Courts:

Eastern District, Philadelphia.

Middle District, Scranton.

Western District, Pittsburg.

Court of common pleas of the several counties within the state.

RHODE ISLAND.

United States Circuit and District Courts:

Providence.

Supreme Court of the State of Rhode Island.

Superior courts of the several counties within the state.

SOUTH CAROLINA.

United States Circuit and District Courts:

Charleston.

Circuit courts of the several counties within the state.

SOUTH DAKOTA.

United States Circuit and District Courts:

Circuit courts of the several counties within the state.

TENNESSEE.

United States Circuit Courts:

Eastern District, Chattanooga.

Middle District, Nashville.

Western District, Memphis.

United States District Courts:

Eastern District, Knoxville.

Middle District, Nashville.

Western District, Memphis.

Circuit courts of the several counties within the state.

TEXAS.

United States Circuit Courts:

Northern District, Dallas.

Southern District, Galveston.

Eastern District, Beaumont.

Western District, Austin.

United States District Courts:

Northern District, Fort Worth.

Southern District, Galveston

Eastern District, Sherman

Western District, Austin.

District courts of the several counties within the state.

UTAH.

United States Circuit and District Courts:

Salt Lake City.

District courts of the several counties within the state.

VERMONT.

United States Circuit and District Courts:

Burlington.

County courts of the several counties within the state.

VIRGINIA.

United States Circuit Courts:

Eastern District, Richmond.

Western District:

Lynchburg Division.

Danville Division.

Abingdon Division.

Harrisonburg Division.

United States District Courts:

Eastern District, Norfolk.

Western District:

Lynchburg Division.

Danville Division.

Abingdon Division.

Harrisonburg Division.

Circuit courts of the several counties within the state.

Circuit Court of the City of Richmond.

Law and Equity Court of the City of Richmond.

Chancery Court of the City of Richmond.

Law and Chancery Court of the City of Norfolk.

Corporation courts of the following cities:

Norfolk.

Newport News.

Lynchburg.

Roanoke.

Danville.

Virginia—Corporation Courts—Continued.

Charlottesville.
Portsmouth.
Staunton.
Alexandria.
Bristol.
Fredericksburg.
Manchester.
Winchester.
Radford.
Buena Vista.
Petersburg.

WASHINGTON.

United States Circuit and District Courts:

Eastern District, Spokane.

United States Circuit Court:

Western District, Tacoma.

United States District Court:

Western District, Seattle.

Superior courts of the several counties within the state.

WEST VIRGINIA.

United States Circuit Court:

Northern District, Parkersburg.

United States District Court:

Northern District, Clarksburg.

United States Circuit and District Courts:

Southern District, Charleston.

Circuit courts of the several counties within the state.

WISCONSIN.

United States Circuit and District Courts:

Eastern District, Milwaukee.

Western District, Madison.

Circuit courts of the several counties within the state.

WYOMING.

United States Circuit and District Courts:

Cheyenne.

District courts of the several counties within the state.

LIST OF FOREIGN COUNTRIES AND THEIR RULERS.

DEPARTMENT OF COMMERCE AND LABOR,
WASHINGTON, *November, 1906.*

The following list of foreign countries and the names and titles of their rulers is furnished for the information of clerks of courts to assist them in preparing declarations of intention and petitions for naturalization as required by law.

Several of these rulers are succeeded periodically, and care should be taken in such cases to secure information as to their successors before filling out the naturalization forms. Revised lists will be sent out by the Bureau from time to time.

Name of Ruler, Title, and Country.

Menelik II, Emperor of Abyssinia.

Habibullah Khan, Ameer of Afghanistan.

Thanh Thai, King of Annam.

*Dr. José Figueroa Alcorta, President of the Argentine Republic.

†Francis Joseph, Emperor of Austria-Hungary.

Mir Mahmud, Khan of Baluchistan.

Leopold II, King of the Belgians.

Sayid Abdul Ahad, Ameer of Bokhara.

*Dr. Ismael Montes, President of Bolivia.

Dr. Francisco de P. Rodrigues Alves, President of Brazil.

* Renunciations by citizens of foreign republics should be to the republic only, as, for example, "The Argentine Republic," "The Republic of Bolivia," etc.

† Austrians should renounce allegiance to "Francis Joseph, Emperor of Austria;" Hungarians to "Francis Joseph, Apostolic King of Hungary."

Ferdinand, Prince of Bulgaria.

*Pedro Montt, President of Chile.

*General Rafael Reyes, President of Colombia.

Leopold II (King of the Belgians), Sovereign of the Congo Free State.

*Cleto Gonzales Viquez, President of Costa Rica.

Frederik VIII, King of Denmark.

*Ramon Caceres, President of the Dominican Republic.

*Lizardo Garcia, President of Ecuador.

Abbas Pacha, Khédive of Egypt.

*Armand Fallières, President of France.

William II, Emperor of Germany.

Edward VII, King of Great Britain and Ireland.

George I, King of Greece.

*Don Manuel Estrada Cabrera, President of Guatemala.

*General Nord Alexis, President of Hayti.

*General Manuel Bonilla, President of Honduras.

Edward VII, Emperor of the Empire of India.

Victor Emmanuel III, King of Italy.

Mutsuhito, Mikado of Japan.

Sayid Mahomed Rahim, Khan of Khiva.

Yi Heung, Emperor of Korea.

*Arthur Barclay, President of Liberia.

William, Grand Duke of Luxembourg.

*General Porfirio Diaz, President of Mexico.

Albert, Prince of Monaco.

Nicholas I, Prince of Montenegro.

Mulai-Abd-el-Aziz, Sultan of Morocco.

Prithvi Bir Bikram-Shamsher Jang, Maharaja of Nepal.

Wilhelmina, Queen of the Netherlands.

*General José S. Zelaya, President of Nicaragua.

Haakon VII, King of Norway.

Seyyid Feysil bin Turki, Sultan of Oman.

* Renunciations by citizens of foreign republics should be to the republic only, as, for example, "The Argentine Republic," "The Republic of Bolivia," etc.

*Dr. Manuel Amador Guerrero, President of Panama.

*Juan B. Gaona, President of Paraguay.

Mohammed Ali, Shah of Persia.

*José Pardo, President of Peru.

Carlos I, King of Portugal.

Charles, King of Roumania.

Nicholas II, Emperor of Russia.

*Pedro José Escalon, President of Salvador.

Peter I (Karageorgevitch), King of Servia.

Chulalongkorn I, King of Siam.

Alphonso XIII, King of Spain.

Oscar II, King of Sweden.

*L. Forrer, President of Switzerland.

Sidi Mohamed, Bey of Tunis.

Abdul Hamid II, Sultan of Turkey.

*José Batlle y Ordóñez, President of Uruguay.

*Cipriano Castro, President of Venezuela.

Seyyid Ali, Sultan of Zanzibar.

*Renunciations by citizens of foreign republics should be to the republic only, as, for example, "The Argentine Republic," "The Republic of Bolivia," etc.



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